THE COURT-KEEPERS GUIDE:

OR,

A plaine and familiar TREATISE, needfull and usefull for the helpe of many that are imployed in the keeping of *Lawdayes*, or *Courts Baron*.

Wherein is largely and plainely opened the Jurisdiction of these Courts, with the learning of *Mannors*, *Copyholds*, *Rents*, *Harriots* and other *Services* and advantages belonging unto *Mannors*, to the great profit of Lords of *Mannors*, and owners of these *Courts*.

The third Edition with Additions by the Author

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some times of the Middle-Temple.

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To all the Lords of *Manors*, and owners of *Courts Leet*, and *Courts Baron.*

Gentlemen,

THis is now the third peice of our Law, which by the good hand of God I have lived to Engliſh, and ſend abroad into the world. And this, though ſtiled A help to court-keepers, to whom it will no doubt be very uſefull and helpfull; yet it will be, or may be withall very profitable to others, and moſt of all, to men in your capacity, who are owners of Mannors and Courts: For by this you may ſee the extent of the Iuriſdiction of theſe Courts, and what you

may do therein: what is the duty of your Steward, and what you may require and expect therein from him: By this yon ſhall ſee cleerly what the Profits and Perquiſites of your Mannor *and* Courts *are. Here is the Tenants duty, and the Lords due, and how and by what meanes the Lord may come by it. And now if this find as good entertainment amongſt you as my laſt peice did, you may perhaps ere long heare from me again upon another Subject. Mean while let it ſuffice, that I am reſolved to be alwaies to the Common-weale, and your ſelves,*

A true freind and

Servant,

WILLIAM SHEPPARD.

The Court-keepers Guide.

Chap. 1.

What a Court is; And the ſeverall kinds of Courts.

A Court (in a Law-ſenſe) is taken for the place where juſtice is judicially adminiſtred. And ſo it is either Spirituall; *i. e.* for ſpirituall cauſes and matters: or civill; *i. e.* for civill cauſes and matters. The Civill Courts are again, either of Record, as the Parliament, the Court late called the Kings Bench, the Leet or Lawday, and many others. Or not of Record, as the County Court, Hundred Court, and Court Baron. *Co. Inſt.* 1 *part. fol.* 58. 260. 117.

Court what.

The kinds of Courts.

We ſhall ſpeak only of the Leet and Court Baron: and firſt wee ſhall

ſay ſomewhat of them both together, and then we ſhall ſpeak of them aſunder.

Chap. 2.

Of a Leet and Court Baron together.

These Courts agree in ſome things, as in this. 1. They are both the Common-wealths Courts. 2. They may be kept at any place within the precinct of the Court. 3. They were both originally granted by the King. 4. They were both inſtituted for the more ſpeedy adminiſtration of juſtice. But in more things they differ. For 1. The Court Baron may be kept once every three weeks, or (as ſome think) oftner if it pleaſe the Lord. But a Court Leet is not kept above twice a year. 2. Court Barons did originally belong to inferiour Lords of Manors; but Court Leets did originally belong to the King. 3. The Court Baron is incident to every Manor; ſo that every Lord of a Manor may keep a Court Baron, but few have Leets; for inferiour Lords of Manors cannot

cannot keep Leets without a ſpeciall Preſcription or a ſpeciall Patent for them. 4. In the Court Baron the ſuitors are Judges, but in the Leet the Steward is Judge. 5. In the Court Baron the Jury may be of leſſe then twelve, but in the Court Leet never; for in a Court Leet ſtrangers may be impanelled of the Jury, but not ſo in the Court Baron. 6. A Court Baron cannot continue without two ſuitors *ad minimum*, but a Court Leet may continue without any ſuitors. 7. The Court Baron doth not enquire of any offence againſt the State; But the Leet doth enquire of all offences under high Treaſon, and of ſome high Treaſons alſo; but as felonies: *Co. of Copyholds fo. 60, 61. 6 H. 7. 4.*

Judge.

Jury.

Now we ſhall ſpeak of them aſunder. And firſt of a Leet.

CHAP. 3.
Of the Leet.

THe Leet (called alſo a Lawday, and a view of Frank-pledge) is an ancient Court of Record, inſtituted for

Leet what.

reformation of publick offences or Crown matters within the precinct thereof, after the example of the Sheriffs turne. For the Leet is derived out of the Sheriffes turne, and is holden before the ſteward as Judge; who hath (except in ſome few things) the ſame power for the compaſſe and reach of its juriſdiction, which the Sheriffe hath in his Turne for the whole County. And therefore after the grant of this derivative Leet, the Sheriffe in his Turn is not to meddle within the reach of this Leet, unleſſe it bee in caſe of the neglect of this Leet; and that not then neither (as it ſeems) without a ſpeciall writ: and unleſſe it be in caſe where the Leet is forfeit into the States hands. And if the Sheriffe do otherwiſe he is a treſpaſſer: And if the Sheriffe warne any man that doth live under the precinct of another Leet, to appear at his Court, the party may be diſcharged by a ſpeciall writ. This court at firſt was doubtleſſe by the Kings grant, but at this day it is and may be claimed by preſcription. *Finches* Law 246. *Co.* 2 part of *Inſt. f.* 72. *Co.* 4. part *ch.* 54. *F. N. B.* 160.

Judge. The nature and originall of it.

Co. 4. *Inſt.* 261. ſeith the Stat. of 28 *Ed.* 3. *cap.* 9. extends not to ſuch writs upon ſuch omiſſion.

CHAP.

CHAP. 4.
Of the place wherin the Leet is to be kept.

THe Leet may be kept in any place within the Hundred, Pariſh or Manor of which it is: as if it be a Leet for a Hundred it may be kept in any part of the Hundred. If it be a Leet for a pariſh or Manor, it may be kept in any place within the pariſh or Manor. In this therefore it doth differ from the Sheriffes Turne, which is to be kept in the accuſtomed place, otherwiſe the Sheriffe may be puniſhed for it by Indictment. *Mag. Charta ch.* 35. *Dier* 151. 8 *H.*7. 1. 4. *Co. of Copyhold f.* 60. *Powell of a Court Leet f.* 22, 23. *Co. upon Mag. Charta. f.* 72.

CHAP. 5.
Of the time when the Leet muſt be kept.

THis Court is obtained by Grant, or Preſcription; if it be gotten by grant it muſt be kept according to the grant. Otherwiſe it is by Preſcription, for a Leet may be kept at any time of the yeat if it hath been uſed time out of mind ſo to be kept. And the Lord of this Court is not as the Sheriffe is for his Turne bound to keep it twice a yeare, (*viz.*) within a moneth of Eaſter, and within a moneth of Michaelmas. For one may preſcribe to keep his Leet once or twice a year at any time of the year upon reaſonable warning given, and if he can by uſage prove it to be ſo kept, it is good enough. But if the Leet hath been uſed to be kept but twice a year, and at a day certain, or within a moneth of Michaelmas and Eaſter, and was never known to be kept at any other time, then it muſt be kept at that time, and cannot be kept at any other time. And if it be kept at any other time, all the Acts of the Court are *Coram non judice*

and

and void. *Co. ſuper Lit.* 115. *of Copyhold f.* 60. 71. *Co.* 2 *part of Inſt. f.* 72. 38 *H.* 6. 7. *Dier* 233. *Powell of a Court Leet, f.* 21, 22. *&c.*

CHAP. 6.

The perſons that are bound to do ſuit to this Court Leet.

ALL perſons of menkind from twelve year old to ſixty, except religious perſons, Barons, Earles, Tenants in ancient demeſne, and ſuch as have Hundreds of their own, that dwell within the precinct of other Leets, are bound to doe ſuit in this Court. For every man muſt be within ſome Leet, and no Preſcription will exempt a man from it. If therefore a man be under no particular Leet he ſhall be under the Sheriffes Turne. But if a man dwell within the precinct of another Leet, and have lands onely within my Leet, I may not compell him to doe ſervice to my Leet. And yet if he dwell ſometimes in one place, and ſometimes in another, and one of theſe places is within my Leet, where he dwells at the time my Leet

Where he shall be said to be commorant, where not, *vid. Co. 2d Inst.* 122.

is held; in this case and at this time he must doe service at my Leet, for hee may do suit at both places at severall times. And any stranger in case of want of Jurors may be made to serve of the Jury. And not onely tenants that hold of the Manor wherein the Leet is; but others that live there, and not onely those that are resiants, but others may be punished there, if they there offend, and can be there met withall. *Marlb. chap.* 10. 12 *H.*7.13. *F.N.B.* 160. *old Book of entries* 390. *Powell of a Court Leet f.* 20,21,22.

Chap. 7.

Of the Jurisdiction and power of the Leet and the Steward thereof. And what offences may be enquired of and punished in this Court.

1 In making a Jury. Fine.

THe Steward in this Court may compell any man that doth live within the precinct of, and doth owe suit to the Leet to serve in the Jury. And in case of want of a sufficient number, he may compell any stranger to serve of the Jury; and if he refuse, fine him for his

his contempt 7 *H.* 6.12. And in ſome ſpeciall caſes he may impannell a ſecond Jury to enquire of the concealments of the firſt, and fine them for their offence. 33 *H.*8.6. 1 *Eliz.* 17.

The Steward of this Court may fine any man for a contempt in the face of the Court; as if a man refuſe to bee ſworn of the Jury, or being ſworn to preſent what he hath evidence for, or depart without giving of his verdict. Or if one being duly choſen an officer and being preſent in Court, refuſeth to be ſworne, or if an affray be made in the preſence of the Court, or a Tithing-man refuſe to preſent, or a Bailife refuſe to return a pannell; in all theſe and the like caſes the ſteward of himſelfe may impoſe a reaſonable * fine on the offender, and this fine is not afferable nor traverſable. But the ſteward cannot at this day *commit to priſon any man for his contempt, nor can he now take a Recognizance, or bind any man to the good Behaviour, as heretofore he might have done, and as the Sheriffe in his Turne may doe. And yet *Co.in.*4. *part of his Inſt.f.*263. holdeth that he may take a Recogniſance for the Peace.

2 In puniſhment of a contempt. Fine.

* Note the fine muſt be ſeverall, and if the offenders be amerced joyntly for joynt offences, it muſt be ſeverally affered. 8 *rep. Greiſly's* caſe. 11 *rep. Godfreys* caſe.

* Impriſonment. Recogniſance.

7 *H.*6.12. *Co.*8.39. 11.44. *Dier* 211. 233.11 *H.*6.7. *Powell of a Leet f.* 32, 33. 10 *H.*6.8.

3 In making of officers & giving of oathes.

In this Court the Steward might and ought to have given the oath of Allegiance, when it was in uſe: they have power in this Court to make and ſwear Conſtables, Tithingmen, Hawards, and ſuch like officers. *Co.* 4. *part of his Inſt. f.* 264.

4 In the things wherein he hath Conuſance.

Amongſt the things whereof the Steward or a Leet hath Conuſance, and wherewith the Jury is to be charged, ſome are ſuch things as may be there enquired of, but cannot be there puniſhed; but they are to be tranſmitted to the Juſtices of the Gaole-delivery, or Juſtices of the Peace. And other things are not onely there to be enquired of, but there to be puniſhed alſo. And theſe are ſome of them, offences at the common law, and others offences by certain Acts of Parliament, by which power is given to this Court therein. 27 *H.*8.2.

Offences by the common law.

Felonies.

The things which are here onely to be enquired of, and not to be puniſhed, are al felonies which were ſo by the common law, though now they bee made

Treaſon

Treaſon, as of ſuch as are enemies to the State; falſifie or abuſe the States Coyn or Seal: So all kind of wilfull burners of houſes, or barns adjoyning thereunto by night, or ſtacks of Corn; robbers of Churches and Chappels, takers of Doves out of Doye-houſes, or young Pigeons, or Hawkes out of their neſts in the night or Fiſhes out of Ponds, ſtewes, or trunks in the night; ſtealers of tame Deere, marked Swans or Peacocks; breakers of Priſon by felons, reſcuers of felons, or the like; and their Acceſſaries before and after the felony done: of all theſe the Jury muſt make preſentment. And this preſentment is to be tranſmitted to Superiour Courts to be proceeded upon. *Crompt. Jur.* 212. 22 *Ed.*4.22. 19 *H.* 6.47. 5 *H.* 4.5.11 *H.*7.1. 1. *H.*8.18.

This Court cannot meddle with any offence againſt a Statute Law, except the Statute give it power ſo to doe. 8 *H.*7.1. 21 *Ed.*4.21. And yet if it were an offence before, againſt the Common law, that doth ſtill remaine. The things whereof this Court hath perfect Conuſance, and that may be enquired of, and puniſhed here in this Court, are 1. by Com-

Common law. 2. by Statute law. The offenders and offences by Common law are these.

For the Lords profit Suit of Court.

1. The defaults of Officers and suiters in doing their suit to this Court. As if any living within the precinct of the Law day, be not returned of the Decennary, or being returned do not appear; or if any above twelve yeares of age, had lived within the Leet, and had not taken the Oath of Allegiance, he was to have been presented here. And if any such person had come to the Court, the Steward ought to have given him this oath. *If any Customes or profits due to the Lord of the Leet, be withheld from him, and by whom.* As if any treasure trove, waife, or estray, or wreck, be kept from him: Or if any claim any royall Franchise or levie any new Franchise, or abuse any old Franchise within the Leet. *Old book of Entries*, 507. 404. Stat. 18 *Ed.* 2. 45 *Ed.* 3. 27. *Crompt. Jur.* 213. of all that are convict or fly for felony, or are outlawed in any Action, *Powell of Courts* 160, 161. See the charge.

Oath of Allegiance.

Customes.

Waife and estray, &c.

Franchises

Common Nusances.

2. All common and popular Nusances or grievances done to the Kings Subjects, by purprestures made in any land, wood,

wood, or water; by walls, hedges, ditches, or houſes, made up or broken down: by ſtraitening, turning, ſtopping, ſurrounding, or otherwiſe hurting the Common wayes, bridges or waters: by poyſoning or corrupting the Aire, by the laying of any carrion or filth, ſetting up of houſes of office, or the like: or by the ſelling of corrupt and unwholſome proviſion: or by the breaking of the due Aſſiſe of bread, bear, &c. by * Cottages, and * Inmates: by no ſcouring ditches, or not repayring highwayes and bridges, and the like. And for all theſe the offender (be he one man or a whole Pariſh) may be amerced and the Jury may order, the reforming of them under a pain. But for private or particular Nuſances to perſons or places, this Court hath not to doe with them. Stat. 18 *Ed.* 2. 29 *Ed.* 3. 29. 2 *Ed.* 6. 10. 1 *Jac. chap.* 19. *Co.* 4 *part of the Inſtit. f.* 72. *Dier* 13. *old book of Entries*, 390. 550 See the Charge.

* 10l. the building, 40s. a moneth the continuance.
* 10s. a moneth. Amercement.

3. All great affraies, outcries and bloodſheds, and ſuch like popular treſpaſſes, which are treſpaſſes by the Common law. But not any particular treſpaſſe to one man, as beating him, or the like,

Notorious treſpaſſes and breaches of the peace.

like, unleſſe bloodſhed follow; not to one Pariſh; as eating up or incloſing their Common, or the like; nor any treſpaſſe puniſhable by a Statute, unleſſe the Statute give Conuſance thereof to this Court. *Old book of Entries*, 300. *Co.* 9. 113. *Dier* 234. 13. *Bro.* and *Fitz. Lett and Turn.* See the Charge.

Riots, Routs, and unlawfull Aſſemblies at the Common law are puniſhable in this Court. And for this the offenders are to be amerced according to diſcretion: this muſt be reaſonable, and the reaſonableneſſe triable and avoydable, by plea or judgement of the Court in which the ſuit depends, 11 *Rep.* 44. 6. *Powell* of *Leets* 166.

Evil-members, or perſons of ill behaviour.

4. Evill members, and perſons of ill behaviours that are dangerous to their neighbours as malefactors in Parks, ſuch as take Doves by engines, ſuch as are common ſuſpected theeves, or that are the common meſſengers of theeves, the common drunkards, the common hanters of Alehouſes or Taverns, not having whereon to live night-walkers and day-ſleepers, that live idlely, have no eſtate, and yet fare well, eveſdroppers, common hedge-breakers, common peace-breakers,

ers, raylers and ſowers of diſcord between neighbours, keepers or haunters of baudy houſes, common ſcolds, common Barretors, common Uſurers, Innekeepers who do commonly entertain theeves and ſuſpicious perſons, knowing or ſuſpecting them to be ſo, and ſuch as do remove bounds or Land-markes between Pariſhes, Hundreds or Counties; but not ſuch as remove bounds between perſons onely. All theſe the ſteward of this Court heretofore might have bound to the Peace or good behaviour, but at this day he can onely by the preſentment of the Jury, an erce them or make way to have them bound to their good behaviour by a Juſtice of Peace. 18 *Ed.* 2. *Bro.* Leet throughout. 2. part of his Inſt. f. 73. 27 *H.* 8. 17. 4 *H.* 7. 1. *Hob. rep. pl.* 311. See Charge.

5. Conſtables, Tything-men, Hay- Officers.
wards, Alecunners, Bayliffes and ſuch like Officers which are choſen and ſworn in this Court, if any ſuch being choſen refuſe the office and to take the oath, or accepting doth not execute his office duely, or misbehave himſelfe therein, as if Conſtables and Tything-men doe not take care of watch and ward, keeping the

the Peace, raiſe hue and cry and purſue it for the apprehending felons, when any felony is done; or raiſe hue and cry when none is done; or do not puniſh rogues, and the like. Or Tythingmen, chiefe pledges. Surveyours of high wayes, ſearchers and ſealers of Leather, and ſuch like Officers as doe not their duty. 23 *Ed.* 1. 4. 22 *Jac.* 5. 14 *Eliz.* 5. 1 *Jac.* 9. See the Charge. *Kytch.* 12.

Diſturbers of Juſtice.

6. All that reſcue perſons or things taken in a courſe of law; as reſcuers of perſons arreſted, or goods or cattell diſtrained, pound-breakers and the like. See the Charge.

Neglect of Inſtruments of Juſtice.

7. Lack of Stocks, Pillory and Tumbrell, Cucking-ſtool, Common pound. *Old book of Entries*, 390. 495. *Powell of a Leet* 156. See the Charge.

Offences in trading. Deceit.

8. All that uſe deceit in buying and ſelling, that ſell falſe wares for good, eſpecially if it be that which is to be eaten or drunk; that ſell by falſe weights and meaſures, Innekeepers, Victuallers, Bakers, Brewers, Fiſhers, Powlterers, or Fiſhmongers, that ſell that which is unwholſome for food, or ſell at unreaſonable prices; Bakers and Brewers that do not keep the Aſſiſe of Bread and beer,

and

and Millers that take exceſſive toll. 2 *Ed.* 6. 15. 21 *Jac.* 21. 14 *H.* 8. 12. 1 *Jac.* 22. 5 *Eliz.* 8. 8 *H* 6. 5. 27 *Ed.* 3. 10. *Hob. Rep. pl.* 163. 13 *Ed.* 3. 6. 13 *R.* 2. 18. *Co.* 2 *part of Inſt. f.* 72. 4 *Ed.* 4. 31. *Stat.* 9 *H.* 5. 8. *Old Book of Entries*, 390. See the Charge.

Foreſtallers, Regrators, and Ingroſſers (it ſeems) may be puniſhed in this court by the Common Law. And Uſurers, as enemies to trading. *Powell of a Leet.* 101. 102. But in theſe and ſuch like caſes the penalty of the Statute cannot bee impoſed, for Stewards have no power by the Statutes, but it is puniſhed here as an offence at the Common Law, before the Statute, which doth remain ſtill; and for theſe the offender is to be amerced. *Powell of Leets.*

But this Court cannot take Indictments of any felony for the death of a man, or in any other caſe where it hath not Conuſance; And if it doe ſo, it is void, and it ſeems the Judge may be puniſhed for it. So neither can it take a Preſentment of an offence done againſt a Pariſh, or againſt a man.

And therefore a Preſentment in this Court for levying of gate, To the Com-

mon nuſance of the inhabitants of *Dale*, for oppreſſion in a Common, for beating a man, breaking a hedge or the like, is void, and all the proceedings thereupon unwarrantable; and *Coram non Judice*. *Co.9.114.4 H 6.10.22 Ed.4.22.23 H.* 8.8.41. *Aſſ.pl.*30. The like is of all Preſentments of any thing out of the Juriſdiction or precinct of the Court.

The offences and offenders puniſhable in this Court by the Statute Lawes are Tanners, Curriers, Shoomakers, Searchers, Sealers, by 1 *Jac.*22. Such as offend about fiſh, by 1 *Eliz.*17.3 *Car.* 4. about malt, by 2 *Ed.6.*10. 27 *Eliz.* 14. about Archery, by 33 *H.*8.9. about Guns, by 33 *H.*8.6.14 *H.*8.11. about unlawfull games, by 33 *H.*8.9. about Artificers and labourers, by 2 *Ed.6.*15. 24 *H.*8.12. about Muſters, by 4 *&* 5 *Ph. & M.*3. about High-ways, by 29 *El.* 5.2 *&* 3 *Ph. & M.*8.5 *Eliz.*13. about Horſes, by 32 *H.*8.13. about Hoſtlers and Victualers, by 31 *H.*8.14.41. 21 *Jac.*21. about the price of Wine, by part of 1 *Jac.*25.7 *Ed6.*5. about Pheaſants and Partridges, by 23 *Eliz.* 10. about tracers of Hares, by 14 *H.*8.10. about hunting in Corn, by 23 *Eliz.* 10. about cot-

cottages and Inmates, by 31 *El.*7. about drinking and drunkenneſſe; by 1 *Jac.* 10.5 *Jac.*5.21 *Jac.*7.about watering of Hemp where cattell drink, by 33 *H.*8. 17. about Rogues, by 14 *Eliz.* about Crows, by part of 24 *H.*8.10. 8 *Eliz.* 15. about Horſes, 32 *H.*8.13. And of all theſe and ſome others, this Court may enquire by authority of theſe Acts of Parliament. See the charge afterwards. *Co.*2. *part of his Inſt.*263.

The Articles to be enquired of by the Leet, by 18 *Ed.*2. were enquirable therein by the Common Law.

The Jury in this Court may make By Lawes, and enquire of the breach of them as they have been uſed to do. And for Cawſeyes, High-wayes and Bridges, the greater part may bind the reſt without conſent, 34 *Ed.*3.19. See chap. 39.

Chap. 8.

The manner and order of proceeding in the Leet.

THE manner and order of the proceeding in this Court, is ſomewhat after the order of proceeding in

the Sheriffes turn, out of which it was derived. The Steward after he hath called the Court, doth ſwear and charge the Jury. Jury; the which muſt conſiſt of twelve at the leaſt, and twelve will ſerve: *Old book of Entries*, 392.

And if it be a Leet for a whole Hundred, it is fit to make ſome of the Jury of all parts of the Hundred: And if the cuſtome of the place bee to make two or more Juries, or one grand Jury and diverſe petite Juries, it is good to obſerve it. And the Conſtables and ſuch like Officers. Officers, muſt bee charged alſo upon oath, and muſt Preſent either to the grand Jury, and they muſt make it part Preſentment. of their Preſentment, or elſe the e Officers muſt Preſent alone; but the firſt is the better way. (And if twelve agree where the Jury doth conſiſt of more, it is good enough, 11 *Car. B. R.*) but the Steward muſt ſee that the Preſentment be good. And for this,

1. That it be in Latine, for otherwiſe ſome ſay it is not good: but however the Steward muſt turne it into Latine ere it be pleadable, or given in evidence.

4. That it ſay, Within the Juriſdiction of this Court.

3. Tha t

3. That it be certain, for if the Preſentment be thus, That J.S. did turn ſuch a water-courſe, or ſtop ſuch a way, and doth not ſay when nor where, this is void.

4. If it be of a Nuſance, it muſt ſay, To the common Nuſance of the People.

5. That it be made of ſuch things whereof the Leet hath conuſance, otherwiſe it is not good.

6. If the Preſentment bee of a felony, it ſeems it muſt be put under the hands and ſeals of the Jurors; and by writing indented of two parts, one whereof is to be under the Stewards hand; and this muſt remain with the Jury; and the other is to be under the hands of the Jurors delivered to the Steward, and by him to be tranſmitted to the Juſtices of the Peace at the next quarter Seſſions, to the end that the partie may be there tried thereupon. But for other matters preſented by the Jury, the Steward is to proceed upon them: For * a Preſentment in a Leet duely made by the Grand Jury, is ſaid to be as Goſpell, and no Traverſe lyeth to it, but in ſome ſpeciall caſe, as when it doth concern freehold: as if J. S. be

* *Fitz.* there ſaith, that *Britons* opinion was contrary, that every Preſentment both in Leet & Turn was traverſable. Traverſe,

Preſented that he by reaſon of Tenure is bound to repair ſuch a way or bridge; or when the Preſentment is for not amending a way which is out of the Juriſdiction of the Court. And in theſe caſes alſo he cannot put in a Traverſe after the firſt day. But no Traverſe lieth to the Preſentment of a bloodſhed, or the like, *Dyer* 13. And upon this Preſentment of offences and no certain penalty impoſed by the Jury; and ſo likewiſe for default of appearance, and other faults done in the Court, for which no certaine Amercement is impoſed, the Steward doth Amerce, and then it muſt be affered; (that is) by oath of ſome men ſworn to that purpoſe it muſt be ſet down the certain ſumme which the offender ſhall pay; and this may be done either by the Jury it ſelf for all ſuch offences, as are within their Preſentment: Or it may be by two or three of the Jury or others made afferors, ſworn to that purpoſe, according to the cuſtome of the Court; ſee the Oath afterwards. But the Steward himſelf cannot doe it; and yet there needs no affering in theſe following caſes.

Amercement. Theſe defaults are uſually preſented by the Jury.

Afferement.

1. When the Steward himſelf ſets a Fine

Fine in certain upon a man for any of- Fine.
fence done in face of the Court.

2. When the offence is done by an Officer of the Court out of Court, and Preſented by the Jury, and the Steward impoſeth the Fine.

3. When there is an Order made upon a certain penalty, (whereof all the Reſiants are to take notice at their pe- Notice.
rill, 11 *Car.* by *Jones & Berkly*) and the Order is broken and preſented to be broken, and the penalty forfeit.

4. When the Jury doth Preſent a man for an offence done, and amerce him a certain ſumme for it.

5. Where the mulct in certain is appointed and ſet by any Statute for that offence; for in this caſe no other ſumme or puniſhment can be impoſed. And in all theſe caſes when the Fine or Amercement is made certain, the Steward is to extreat it; (that is) to make out Sche- Extreates.
dules and copyes of the offenders names, the offence done, and the ſummes impoſed upon them, with his Warrant annexed to the Bayliffe; (or if it be an offence againſt a Statute, to that Officer the Statute directeth to levy it) And the Bayliffe may by this, levy it to the

Lords uſe. And for this Fine or Amercement at Common Law, the Lord may either bring an action of debt, or diſtrain a reaſonable part of the goods, and cattell diſtrainable of the offender himſelf (but not of another) in any place in the high-way, or elſewhere; and in owner or another mans cuſtody within the precinct of the Leet (but not elſewhere;) and either ſell them or put them in Pound at his choice; and if the party offer the money, the Lord muſt accept it, 3 *H.*7.4. 21 *H.*7.40. 2 *H.*4. 24. 7 *H.*6.12. 5 *H.*7.3. *Stat.* 13 *Ed.*1. 13. *Crompt. Jur.*212, *Bro. Leet thorough.* Preſentment, 1.5.27 *H.*8.2. *Hob. rep. pl.* 163. 47 *Ed.*3.12. *Co.*8.40.11.14. *Old book of Entr.* 390.550.507.495. *Powell of Leets, f.*33,34. *&c. Co.*8.38.11.32.

Debt.

Diſtreſſe.

The manner of keeping this Court, wherein this point is more largely opened, followeth.

Chap. 9.

The manner of keeping a Court Leet.

First a Warrant muſt be ſent to give notice of the Court. And it is good

to

to give notice enough, ſix dayes or more before the time; but if it be leſſe time it is ſufficient in Law.

This notice muſt be given by the Stewards warrant after this manner.

W. S. Gentleman Steward of the Hundred [or Mannor] of *S* To the Bayliffe of the ſame Hundred [or Mannor] greeting. You are hereby required to warn the Leet to bee kept for your Hundred [or Mannor] [or Leet and Court Baron to be kept for the Hundred of *S.* and Mannor of *A.*] the 1 day of *April*, &c. by 9 of the clock in the forenoon, of the ſame day, at the uſuall place there, [or at the now dwelling houſe of *&c.* as the caſe is.]

Given under my hand, &c.

W. S. Steward.

The

The Court Hundred of Slaughter.

The ſtile of the Court is to be entred thus, if it be for a Hundred.

The Court of view of Frankpl. of Slaughter, held at B before *W. S.* Gent. Steward the firſt day of *Aprill* the yeare &c. *Co.* 4. 2.

If it be for one Mannor or place, thus:

The Mannor of Slaughter.

The Court of view of Frankpl. for Slaughter, for the Mannor of Slaughter, &c. [as the caſe is held] &c.

If the Leet and Court Baron be kept together, as they may be, thus:

Slaughter.

The Court of view of Frankpl. with the Court Baron of *J. S.* Knight, for the Mannor of Slaughter there held, &c.

Then let the Crier make three ſolemn Proclamations, and then let him ſay after the Steward thus:

All manner of perſons that have been warned to appeare here this day, or owe Suit to this Court [or Courts] to be held here this day, come in and doe your Suit; And all Officers and others, anſwer to your names at the firſt call, upon pain and peril that ſhall fal thereon.

Then

Then call all the Reſiants, and mark every one that appears with a prick, and amerce them that make default thus: *A. B.* amerced, 6d. and ſo all the reſt; and then put in the margent over againſt their names, Are Reſiants and owe ſuit to this Court, and have made default, therefore is every of them amerced, as appears upon their heads.

Then call all the Tythingmen of every Tything, and ask him if his Tything be there; and ask him what Law-day, Hundred ſilver, or Common Fine he hath brought and receive it.

Then call all High Conſtables, and Petite Conſtables; which done, give to every one his Oath, thus:

You ſhall ſwear, you ſhall make true inquiry & Preſentment of all ſuch Articles as ſhall be given you in charge, & belong to your Office concerning the Common-wealth, and Lord of this Leet; and ſhall not conceal or forbear any man or matter out of favour or partiality: nor Preſent any man or matter out of malice or evil will, but according to truth: *So help you God.* And

And if the Tything appear with the Tythingman, ſwear them thus:

The ſame Oath that *I. S.* your Tythingman hath ſworn to keep for his part, every one of you ſhall keep for your parts; *So help you God.*

So Ale-taſters, and other Officers, if there be any there, are to be ſworn according to the cuſtome of the place.

Then having the names in writing of the Jury, 24. if ſo many be to be had, from the Bayliffe, bid the Cryer make an *O yes*, and bid him ſay thus: You good men that are returned to enquire for the Common-wealth, and the Lord of this, Leet anſwer to your names at the firſt call, upon pain of Amercement.

Then call them by name, and marke them with a prick that appear, and having a ſufficient number, call the foreman to the Book, give him the ſame Oath as before to the Tythingman; then call the reſt, three or foure at a time, and ſwear them as the Tything is ſworn before.

Then

Then enter the Jury thus:

A. B. ——Jur.
C. D.
E. F. ——Jur.
G. H.
I: K.
L. M.
N. O. ——Jur.
P. Q.
R. S.

Then count them; which done, command the Cryer to make a Proclamation, and then ſay thus, All you that are Sworn, draw near and hear your charge, and the Court commandeth all men to keep ſilence, while the charge is in giving.

Then give their charge to this effect.

MY Maſters, you that are ſworn in every action two things are to be conſidered: The action it ſelf, and the end of that action, whither it tends: for the wiſe man begins from the end. In the buſineſſe whereabouts we are, we will at this time take occaſion to adde a third, which yet in order we will

will make the firſt, and that ſhall be firſt by what authority we doe this, and what warrant we have for it, for that in all publick buſineſſes is alſo conſiderable: Firſt, then for our Authority, it is from the Law, from the ſupreme Magiſtrate; yea, from God himſelf, who hath and doth ratifie in Heaven the Lawes and Ordinances of Magiſtrates agreeable to the Law of God; (whereof this is one we are now about) and requires every ſoul that it be ſubject thereunto. That this is done by authority of Law, and is agreeable to Gods Law, I think none will deny. This one plain Argument wil prove the firſt, the Catholick, and Univerſall, and Continuall keeping and holding theſe Courts throughout the Kingdome in all times and ages, and that without controlment; as alſo certain Acts of Parliament, for the rectifying, reforming and directions of

theſe

theſe Courts, beſides the neceſſary and profitable uſe of them: Then that they are agreeable to Gods Law, and not beſides nor againſt the ſame, is as clear as the former; for as our whole law doth nothing elſe but forbid the evill, and command the good, ſo all the Ordinances of the Law (whereof this is one) are to no other purpoſe but to ſee this be done, to preſerve the juſt, and to find out and puniſh the contrary: And this will the better appear if we conſider the particulars of the things here inquirable & puniſhable given in charge: whereof (I dare be bold to ſay) there is not one that jarreth with the Law of God, but is conſonant & agreeable thereunto. Secondly, for the nature & quality of the Court, we ſhall the better ſearch it by the conſideration of the Originall of theſe Courts: and the end which is to come after will tell us ſomething more

more herein. For the Originall of this Court, our Law tells us, that all Administrations of Justice, was at the first for order sake put into the hands of the King, and men went to him as to the fountain and spring-head: But after by reason of the multiplication of People, & so of causes, as the Realm was divided into Counties, so the power of the King was likewise divided into the Deputies of those Counties, as to subordinate Magistrates, amongst whom he was called Chief Justice, and men were, as they still are, directed to them as the streams flowing from the fountain to fetch and draw Justice to themselves; and this Deputy is him we now call *Vocecomes*, our High Sheriffe; of whose power and office it is not our purpose to speak, but to him is the Government of the County committed, and for his help therein he hath two Courts assigned to him,

the

the one for publique, the Sheriffes Turn, the other for private matters called the County Court: And this alſo by multiplication being found too great a burden for the Sheriffes and the people too, was then ſubdivided further into Hundreds and Pariſhes, who have divided the power of theſe Courts unto them in this the compaſſe of their Precincts, and there were ſuch as were ſpeciall Conſervators of the Peace, now called High-conſtables in the Hundred, Petite conſtables in the Pariſhes: And ſo theſe Courts by Common Law have the ſame power within the Hundreds and Pariſhes as the Sheriffe hath in his Sheriffes Turn, unleſſe it be in ſome ſpeciall Caſes. So that this Court is a power for the redreſſing and reforming of publique wrongs to the whole body of the Common weal; of publique wrongs I ſay, for private and perſonall matters ſimply. Firſt

wrongs between man and man, whether by force or fraud, are not herein equitable, but for them the County court and Hundred is properly appoynted; and therefore all ſuch Preſentments as are only of a wrong to ſome men or place alone are void. So that by this we ſee that we have the ſame power here that the Sheriffe hath in his Turne, unleſſe it be in ſome ſpeciall caſes: and the nature both of this and that Court are to inquire and reforme publick injuries, and ſuch as are againſt the body of the Commonweale.

Then for the ends of this court they may be three.

1. To take notice of the Hundreders, and to keep an account of them; and therefore it may be called, the view of Frank pledge, or the overſight of the people, who were all anciently called pledges, whereof one was the chiefe; for that then they

they were pledges one of anothers behaviour, whereof he that we now call Tythingman was chiefe.

The ſecond end may be, that the people may be inſtructed in the Lawes of the Realme, and know what they ought to eſchew, and what to follow.

And thirdly, and eſpecially, for the more ſpeedy, eaſie and due execution of Juſtice. For which purpoſe (as you know) we have here inquiries and ſearch after offenders: A Preſentment of them and a proceeding againſt them. And in order and reference to theſe ends, we have charged you upon Oath to make, yea, to make diligent inquiry: So that you are not onely to preſent what comes and is offered to you, but you are to ſearch about, and that diligently for occaſions; and that as you ſhall find truly and faithfully without favour or fear to Preſent: wherein I doubt not of

your care and conſcience. For me to enter into the learning of an Oath, and Arguments Divine to perſwade you to care, and your duty in this buſineſſe, I hope it is altogether needleſſe: we live in times of aboundance of light and knowledge, and all (I hope) do know the Lord; yet let me ſay this, An Oath is a Sacred Ordinance of God, a holy Invocation of his Name, to witneſſe the truth of that we ſay or promiſe; The qualities or qualifications of it when it is done well, is in Truth, in Righteouſneſſe and Judgment: That you omit none of the Truth, and that you preſent nothing above the Truth. Secondly, that you do it alſo with Judgement, well knowing what you doe. And thirdly, with Juſtice, dealing to every man his due, without any miſaffection of love or hatred, fear or favour. Though it be too common a fault, ſlightly and ſuperficially to paſſe

paſſe through this buſineſſe, yet I hope better things of you; that you will more reſpect the Oath of the Lord laid upon you, you will weigh the grace and favour of God to us in the enjoying of theſe Courts, that we have or may have Juſtice at ſo eaſie a rate, and that you may not be charged for receiving the grace of God in vain, and abuſing his favour: I know you will be carefull: you will weigh that by the carefull and honeſt diſcharge of your duty in this buſineſſe, God will be honoured, Law obeyed, our ſelves and others benefitted: Elſe on the contrary if you be found negligent or corrupt, Gods Name ſhall be taken in vain, which he will not hold guiltleſſe. And if of every idle word account be to be given, much more of every wicked and falſe Oath, the Law offended, Juſtice hindered, and your ſelves in ſoules and bodies endangered; for

the Lord will be a ſwift witneſſe a-gainſt the falſe ſwearer, and the law will ſet her ſelf againſt him.

The Articles of your charge are like the offences and offenders you are here to inquire of, and they are of two ſorts, ſome of them are greater, and ſuch as this Court have no further to do with but to inquire of and Preſent; you muſt inquire of, and Preſent them. The Stew-ard muſt then tranſmit them to ſome other powers to be proceeded upon further; and ſome of them are leſſe, and ſuch as whereof this Court hath a power of *Oier* and *Terminer*; power not onely to in-quire of, but to proceed upon, and to puniſh. And theſe alſo are ſuch as this Court hath power in either by the Common Law, or by Sta-tute Lawes; we ſhall caſt them all together, and give them to you in the leaſt room and eaſieſt way that we can.

We

We ſhall firſt give you the firſt ſort of offences here to be inquired of, which we ſhall but only touch upon, ſo you are to inquire of all offences which are or were Felonies by the Common Law (except about the death of a man:) and in this conſideration you are to inquire of thoſe offences, that being Treaſon do include Felony, or being onely Felony: and thoſe offences that being Felonies by the Common Law, are now by ſome Statutes made Treaſons. So you were to have inquired of, and Preſented all that did imagine or endeavour the taking away of the life of the King, Queen or Prince, all that had defloured the Queen, or wife of the Prince, or Kings eldeſt daughter unmarried, ſo you are to inquire of any that levie war againſt the Kingdome or adhere to the enemies thereof, counterfeit any of the great Seales or money, kill the

Juſtices of the one or other bench, in doing their Offices, and ſuch like offences.

Felonie. You are to inquire of all Larcenies and Felonies, in taking away of another mans goods, which is greater or leſſe according to circumſtance; for to rob a Church of Pariſh goods, is Sacriledge: To take away any thing, though but a penny, openly or ſecretly, from the perſon of another, is robbery: To breake a mans houſe with a purpoſe to rob, is Burglary; and theſe are great offences. But in other caſes to ſteal a mans goods or cattle, if it be in value above twelve pence, is but an ordinary Felony; if under, it is but onely a Petite Larceny, for which the offender is to be whipped onely, and not to be brought in danger of the loſſe of his life and eſtate, as he is for the reſt. The burning of houſes or barnes of Corne, out-houſes adjoyning to dwelling-

houſes

houſes in the night, is felony by the Common Law; ſo the felonious taking of Doves out of the Dove-houſe in the night, young Doves or Goſhawkes out of their neſts, Fiſhes out of Ponds or Trunkes, in the night; of tame Deere, Swans or Cignets marked, or Peacocks, it ſeems is felony by the common Law: Of all theſe you ſhall inquire and preſent.

You ſhall inquire of the Acceſſaries to theſe offences, be they before or after the offence: And after the offence: Firſt, either by the breaking of Priſon, & getting away himſelfe: Or ſecondly, by helping to convey away the Priſoner, which may be by force, as reſcue or the like, or fraud: Or thirdly, by a voluntary or negligent eſcape of an offender: Or fourthly, by a miſpriſon, which is the concealment of a great offender and offence; for by all theſe wayes a man may partake Acceſſaries

take of another mans offence, and ſo be liable to puniſhment.

Theſe are the firſt ſort of offenders, and if you ſhall find any ſuch, you ſhall inquire and preſent what Lands and Tenements, goods and chattels, they had at the time of their offence committed, or at any time after.

For the Lords profit. In the next place you are to inquire of ſuch offenders, and their offences which may be heard and determined in this Court. And ſo you are firſt to inquire of ſuch things as concern the Lords profit, and the ſupport of the Court, as of

Suitors. Officers, and others that owe Suit to this Court, and have not been called, or having been called have not appeared: Of ſuch as having lived a year and a day, within the precinct of this Law day, and are not liſted as a reſiant; and here-

Oath of Allegiance. tofore, if they had not been ſworn to the King for their Allegiance, their

their Parents or Maſters are to be amerced for this. Of ſuch as withhold any cuſtomes or ſervices incident to the Leet from the Lord of the Leet, as Hundred weight, Kings ſilver, or the like money. Of Treaſure trove, *i.* Any that have found above or under ground a Treaſure, the owner whereof is not known. Of Waifs, *i.* Goods ſtolne and left by the Felon in his ſtrict purſuit. Of Wreck, *i.* The goods upon a Shipwrack caſt into the ſea, that are come to land, the Owner being caſt away. Of Eſtray, *i.* The tame beaſts found wandring within the precinct of the Law day, and not owned by any man. Of any that claim any Royall Franchiſes, or abuſe them within the Leet. For all theſe offences the offender is to be amerced according to your diſcretion.

Cuſtomes.

Hundredweight.

Treaſure trove.

Waife.

Wreck.

Eſtray.

Franchiſes.

Amercement.

The eſcheats of all Felonies did pertain to Lords, and therefore are in-

Eſcheats.

inquirable here, you are to inquire therefore of all kinds of forfeitures to the State.

Common Nuſances.

Secondly, you ſhall inquire of common annoyances, and popular grievances, *i.* of things done to the common grievances of many: For as to the particular grievance of one man, or ſpeciall grievance of one Pariſh, you are not to inquire in this Court; but that which is, or may be generall, and to many perſons and places. And ſo it is either of a higher nature, as baſe and lewd Alehouſes, though Licenſed. In-mates, *i.* Such as dwell together in a Cottage, within another man, though in ſeverall rooms of the ſame houſe, paſſing in and out at the ſame doore, being poore, and not able to maintaine themſelves. Cottagers, ſuch as build new, or convert old houſes into new, not laying four acres of land to it. And ſuch as divide and multiply

10ſ. a month

10l The erecting. 40ſ. a month for continuance.

tiply houſes that become hurtfull to the place by over peſtering it with poore. Or of a lower nature; *i.* In the ſtreets of Towns, by Common wayes, Cawſeyes or Bridges leading between Towns, by ſtopping up the Ditches, or not ſcouring them, building houſes or walls to ſtraiten, incroachment, turning, digging pits, building houſes, pales or hedges, laying blocks, or not repairing of them, or other doing to them, to the hazard or griefe of the traveller. Secondly, in the common Waters, by ſtopping, turning, or corrupting them, to the hurt of them that uſe them. Thirdly, in the Aire, by corrupting it with houſes of Office, laying of garbage, carrion or the like, if it be near to the Common high way. Fourthly, in the proviſion for mens bodies, when either Victualers, Butchers, Bakers, Cooks, Brewers, Maltſters, or Apothecaries do make or ſel

Victualers Maltſters.

that

that which is corrupt and not wholsome for mens bodies, as when bread or beer is made of bad Corn, malt or hops, or medicines of bad drugs or ſpices, or the bread ſold or offered to ſale is not well baked, or beer not well brewed, or the like; or that they keep not the due Aſſiſe ſet down for Bread and Beer, and Ale. Theſe are common Nuſances, whereof you are to inquire and preſent.

And for theſe the offender may be amerced, and an Order may be made under a penalty to reform it: and if it be a ſtanding Nuſance by a houſe or wall, it may be pulled down; but for every one of theſe Nuſances, being *malum in ſe*, and againſt the Common Law, the of-

Amerced. fender may be amerced according to your diſcretion, or where any Statute hath appointed a ſpeciall penalty, and this Court hath Cog-

xx s. niſance of it; he muſt pay that penalty,

nalty, as for making bad malt upon 2 *Ed.6.*10.

If any water any hempe or flaxe where cattle uſe to drink. xx s.

In the next place, you ſhall inquire of notorious and common Treſpaſſes; as if any great affraies or outcries, or any affray and bloodſhed have been made, by whom, and with what weapons. For the weapons that gave the blow, or were drawn to break the Peace, are forfeit to the Lord of the Leet, of Riots, Routs, or unlawfull Aſſemblies, that have been made, and Rapes: For theſe are to be puniſhed here, not as upon the Statutes, but as an offence at the Common Law; ſo if any levie Hue and Cry, and apprehend a man without cauſe: and for this, the offender is to be amerced according to your diſcretion. Great treſpaſſes.

Next of all, you ſhall inquire of and preſent the common drunkard, the cõmon alehouſe haunter, eſpecially Evil members and perſons of ill behaviour. Haunter of Ale-houſes.

cially if he ſpend much there, and have little: He that keepeth, or doth uſually frequent a Common baudy houſe; he that is a common Barretor, *i.* that takes parties, and moves ſuits, and that commonly for ſmall matters, and taking the worſt ſide. The railer and ſower of diſcord between neighbours. The eveſdropper, *i.* he that doth hearken under windowes, and the like, to heare and then tell newes to breed debate between neighbours. The night-walker, he that ſleepeth by day, and walketh by night. The common hedge breaker, a Rogue, vagabond, and ſturdy perſon, that doth wander up and down. The maſterleſſe perſon that lives without means idlely, without Maſters, fareth well, hath nothing, and cannot give account of his life. The common Scold, he that commonly goeth in meſſages for theeves, or doth harbour and entertain them, know-

Incontinent perſons.

Barretor.

Eveſdropper.

Night-walker.

Scold.

knowing them to be dangerous and
ſuſpicious, all theſe may be amer- Amerce-
ced, and be bound to the good be- ment.
haviour by a Juſtice of Peace. Good be-
haviour.

You are alſo to inquire of, and v^s. a time,
Preſent, any one that hath been or ſix
drunk or tipling in any Ale-houſe; houres in
any Ale-houſe keeper that doth ſell the ſtocks.
without Licence, of being Licenſed xx^s. a time.
doth ſell leſſe then meaſure; one xx^s. a time.
quart of the ſtrong, and two quarts
of the ſmalleſt for a penny: That x^s. a time.
doth ſuffer any to ſit tipling in his
own houſe; or if any do tipple in i^s. a time.
an Ale-houſe.

To remove bounds and markes Bounds.
between Neighbour-hoods, Hun-
dreds, Pariſhes, and Commons;
this tends to debate, and ſuch per-
ſons are very ill members, and may
be puniſhed here.

In the next place you ſhall in- Officers.
quire of Officers, Conſtables, Ty-
thingmen, Haywards, and the like,
that have refuſed being duly cho-

ſen, to take upon them the Office, and take the Oath, or being ſworn do not their duty, as Conſtables that do not their duty in keeping the Peace, watch and ward, in the purſuit of *Hue* and *Cry* and apprehending of Felons, and ſafe keeping of them when they have them; in the ſearching of houſes every moneth for unlawfull games, in the puniſhment of Rogues, and in execution of the Steward and Juſtice of Peace; warrants againſt drunkards, &c. or the like: and for theſe offences they are to be amerced according to your diſcretion. For not puniſhing Rogues, he is to loſe twenty ſhillings for every default, and for not executing of the Juſtice of the Peace, or Stewards warrant againſt drunkards, tiplers, &c. there is a certain puniſhment which muſt be purſued.

Amercement.

Next you ſhall inquire whether you have the inſtruments of Juſtice, the

Inſtruments of Juſtice.

the Pillory, Stocks, Cucking-ſtool, and Common-Pound, all in good reparations amongſt you, if not, by whoſe default it is; and for the lack of theſe, the Townſhip is to be amerced according to your diſcretion.

Next you ſhall inquire of them that oppoſe or diſturb the execution of Juſtice; as if any doe make any pound-breach, and take or let out any diſtreſſe, or if any reſcue be made on any officer in the doing of his office, to take away goods diſtrained, or any perſon arreſted to the impediment of Juſtice, or if one let another out of the ſtocks, or any eſcape be ſuffered, the offender may be amerced according to your diſcretion. Diſturbers of Juſtice.

In the next place you are to inquire of Deceits and other offences in trade and traffique, and ſuch as are imployed therein; of all ſuch as either make or ſell deceitfull wares, Deceit in trade and traffique.

or uſe deceit in that they ſell; As if a Butcher blow up his meat, or the like. Or a Tradeſman ſell by falſe weights and meaſures, or by two; that buy by greater, and ſell by leſſer meaſures: or if Bakers and Brewers keep not the Aſſiſe, the prices and quantities according to the writing of the Marſhalſie, that either ſell leſs in weight or meaſure; or take more in price then is ſet down for theſe offences, they are to be amerced as you ſhall think fit: Or if Victuallers or Fiſhers do ſell at unreaſonable rates: Or if any be a Fore-ſtaller, Regrator, or Ingroſſer; (that is,) do buy any proviſion or other thing comming towards any Faire, or Market, or Citie, or Port to be ſold, or ſhall agree to buy it before it be brought into the Fair or Market to be ſold, or ſhall perſwade with any to ſell them dearer, or to forbear to bring them into the Market, or by up any proviſion in a Fair

Weights and meaſures.

Aſſiſe.

Amercement.

Foreſtaller Regrator and Ingroſſer.

Fair or Market,& ſel the ſame again in any Fair or Market in the ſame place,or within foure miles thereof: Or buy up Corn,Butter,Cheeſe,or other dead victuals, with intent to ſell it againe to advance the price thereof; theſe are offences againſt the Common Law ſtill, and ſo to be inquired of here, and the offender is onely to be amerced for it here, according to your diſcretion.

Baker. If any Baker in any City, Town Corporate or Market Town, make or ſell any horſe-bread, which is not of lawfull Aſſiſe, and a reaſonable weight, after the price of Corn and grain in the Market adjoyning: Or if any hoſtler or Inholder, dwelling in any City, &c. Make horſe-bread in his hoſtrie, or without, or not ſell their horſe bread, and their hay, oats, beans, peaſe,provender and all kinde of victuall, both for man and beaſt, for reaſonable gain, having reſpect to the prices in the Markets

1 Offence fined.
2 Impriſonment one moneth.
3 Pillory.
4 To be forejudged from keeping an Inn.

adjoyning without taking any thing for litter. Or if any Inneholders or hoſtlers dwelling in any Throughfare Towne or Village (being no City, Town corporate, or Market Town where any common Baker having been an Apprentice at that trade by the ſpace of ſeven yeares is dwelling) not make it ſufficient, lawfull, and of due aſſiſe, according to the ſaid prices of Grain & Corn.

Tipler. If a Tipler ſell not by meaſures allowed and ſealed, he may be puniſhed by the Common Law, or upon the Statute.

Butcher. Victualer. If any Butcher, Cook, Fiſher or other Victualler, ſell any manner of corrupt victuall not wholſome for mans body.

Maltſter. If any Malt-maker make any Barly malt, (the Moneths of *June*, *July*, and *Auguſt* onely excepted) but that it have in the Fat and floor, ſteeping and ſufficient drying thereof three weeks at the leaſt; and in

2^s. every quarter.

thoſe

thoſe Moneths, 17. dayes at the leaſt (without which it cannot be wholſome for mans body): Or if any mingle any Malt not being well and ſufficiently made, or being made of mow-burnt or ſpired Barly with other good Malt, and put the ſame to ſale. 2s. every quarter.

If any perſon put to ſale any malt not ſufficiently and well trodden, rubbed and fanned, whereby there may be conveniently fanned out of one quarter half a peck of duſt or more. 20d. every quarter.

If any keep a Tavern or ſell wine by retail out of a market, or corporate Town, or there without allowance of the head Officers. Wines. 10l. a day.

If any be a Tanner not brought up in the Trade, or the childe of a Tanner, or marrying a wife that hath a Tan houſe and Fats, Tanner.

If a Tanner ſhall uſe the trade of a Currier, Cordminer or Butcher, or other uſing, cutting or working of leather. Loſſe of the hides.

If any but Tanners and Tawers of leather buy or agree for any rough hides but for ſheeps.

If any Tanners do not ſufficiently tan and dry their leather.

Currier. 6s. 8d. a skin.

If any Currier uſe any trade of cutting leather, or currie in any houſe, if it be in a Market Town, but his own houſe; or curry leather not well tanned, and do not well curry his leather, or ſhall gaſh any leather in the ſhaving.

Shoomaker 3s. 4d.

If any Shoomaker make any ſhooes of Leather not with good ſtuffe, or offer to ſell them on a Sunday.

Searchers 5l. 10l. Sealers 5l.

If Lords of Leets doe not chooſe yearly Searchers and Sealers of leather, or if the men choſen refuſe, or accepting do not their duty.

* Labourers Conſpiracy: 1, 10l. 20. dayes imprisonment. 2, 20l. or pillory. 3, 40l. or Pillory, & one year.

If any * Labourers conſpire and binde themſelves to doe but ſuch and ſuch work, or ſo much, or in ſuch a manner, and not to end what another hath begun.

If

If any Victualers conſpire, or binde themſelves to ſell at ſuch prices. Conſpiracy of Victuallers.

If any Miller uſe deceit, change the griſt, or take more Toll then due; he may be amerced at your diſcretion. 10l. 20. dayes imprisonment. &c. Amercement.

If any Butcher be a Tanner, or gaſh a hide, or water it but in *June*, *July* and *Auguſt*, or ſell a rotten hide, or ſell a Calf under five weeks old. Tanners.

If any be a Uſurer, and take more for the lone of money then his own again this is an offence againſt the Common Law.

Next you ſhall inquire of other matters: If any man build a Cottage for dwelling, not having laid to it four Acres of Land at leſt of his own free-hold and inheritance to be alwaies injoyed therewith; or if any willinrly continue ſuch a cottage; or if any place, or willingly ſuffer any In-mates in any ſuch cottage. 10l 40s. a month. 10s. a month.

If

High-ways 20s. for not chooſing, &c.

If the Conſtables and Church-wardens do not chuſe Supervisors for the High-wayes.

10s. a time for the Plowes fault. 12d for the man.

If they have not appointed every Plow & Man his work; and if they have not done their work accordingly with the Plow and Man, you are to preſent it. So if men do not dig their Ditches, and pare their trees adjoyning to the high way.

Hawking, 43s. a time

If any hawke or hunt in other mens ground againſt their will, in their eared or codded Corn before it be in Stacks or Cocks: Trace or

6s. viijd.

kill any Hare in the ſnow by dogs as otherwiſe.

xs. a Partridge. xxs. a Pheaſant.

Take or kill any Pheaſant or Partridge with nets or engines in the night.

If any keep any Greyhound, hunting doggs or ferrets, or nets to take Pheaſants, not qualified.

Guns, 10l. a ſhot.

If any uſe a Gun not having one hundred pound a yeare to ſpend, and ſhoot with hail ſhot; or if he kill

kill Pheaſants, Partridges or the like Fowle therewith.

If every one have bowes and arrowes, and do uſe them; and if you have Buts well repaired, or elſe the Pariſh is to be puniſht for the Buts. Archerie. 6s. viij.d. a fault. xxs. 3 moneths.

If men duly called to Muſter, come not with their Armes but abſent themſelves without any good cauſe: Or if Captaines, Muſter-maſters or other Officers take rewards of their Souldiers to diſcharge them in time of Service; or do not pay them having received it Musters, 40s.

If any keep houſes of unlawfull games, as cards, dice, or uſe to play at ſuch games. 40s. & 6s. viijd. a time.

If any take or kill any Salmon, or Trout out of ſeaſon, or take any Pickerell not being in length tenne inches in fiſh or more: Or Salmon not being ſixteen inches or more: Trouts not being twelve inches or more: Barbell not being twelve inches or more. Fiſh. xxs. a time the fiſh and nets.

If

Concealment of a Jury, 20s. a man.

If any Jury being charged to inquire of any of theſe laſt offences have not Preſented it.

10s. A fiſh. Loſſe of nets.

If any within a year fiſh with any net, or the like engine, whereof every meſh is not two inches and a half wide, unleſſe it be nets to take Smelts, Lotches, Mennas, Bucheads, Gudgions and Eeles; or for theſe fiſh with other nets then hath been uſuall.

Horſes.

If any put in any ſtone horſe of two years old under fourteen handfuls high into any, Common or

Loſſe of them.

put any horſe there ſcabbed and infectious.

Crownets.

If any uſe Crow-nets, and there by deſtroy thoſe vermine by which Corn is deſtroyed, and any man refuſe to pay his ſhare for the taking of them.

Doves.

If any take Doves in the winter by doore-falls or engines, ſee below at W.

And laſtly, you ſhall inquire of all

all the by-lawes heretofore made at this Court, whether any of them have been broken, and by whom, and when, and how; And of all theſe things you ſhall make a certain and perfect preſentment. By-lawes.

The Charge being done, cauſe the Cryers to make one Proclamation, and ſay thus:

If any man can inform the Steward, or this Inqueſt of any Treaſon, Felony, or any other matter now given in charge or inquirable at the Leet, let him come into the Court, and he ſhall be received.

If any do come in, ſwear him thus:

The evidence that you ſhall give to this Inqueſt, ſhall be the Truth, and nothing but the Truth: *So help you God.*

Then adjourn the Court thus by Proclamation.

All manner of Perſons that have further to doe at this Court, may depart

depart at this time, and appear here again at two of the clock in the afternoon.

At which time returning, call the Court thus, after an O yes:

All manner of perſons that were adjourned over to two of the clock, or have further to do at this Court, let them come into the Court, and give attendance at their perill.

Then call for the Preſentments of the Jury and Officers, and others that are ſworn; If they be not ready give them a day, and adjourn the Court till then. And at that time call it as before, and enter all the adjournments on the Court Rolls.

But if their preſentments be ready, call the Jury, and ask them whether they be agreed: and if they be all there, and ſay they are agreed, take them and aske them whether they be content they ſhall be altered in form; if they ſay yes, then take them in Engliſh, read them, and amend the forme if need be, and afterwards turn them into Latine.

Then ſwear ſuch officers and others

as

as are to be ſworn, and make and ſwear Afferors if any thing be to be affered, as the amercements for defaults and others, and let them affere them.

The Conſtable ſwear thus:

You ſhall well and duly execute the office of Conſtable, for the Pariſh or Tything of A. untill another be choſen in your roome, or you be diſcharged by order of Law: *So help you God.*

The Hayward thus:

You ſhall ſweare, that you ſhall well and truly ſerve in the Office of a Hayward for this year to come; you ſhall duly and truly execute all ſuch Proceſſe as ſhall be directed unto you from this Court; and you ſhall from time to time ſignifie and Preſent all ſuch Pound-breaches as ſhall happen to be made within your Office; and likwiſe you ſhall Preſent all ſuch cattle eſtrayed, as ſhall uſually come within your Office, and in every thing well and truly

truly behave your ſelf during the time aforeſaid: *So help you God.*

The afferors thus:

You ſhall well and truly Taxe, Aſſeſſe, and Affer, the ſeverall amercements here Preſented, and now to you remembred; you ſhall not ſpare any man for favour, nor increaſe upon any man for malice; but upon every man according to the quality and quantity of his offence and faults: *So help you God.*

For Allegiance, it was thus given.

You ſhall ſweare, that from this day forwards you ſhall be true and faithfull to our Soveraign Lord the King, and his Heires and lawfull Succeſſor; And faith ſhall bear of life and member, and terrene Honour: And you ſhall neither know nor heare of any ill or dammage intended unto him, that you ſhall not defend: *So help you God.*

And

And then discharge the Court thus with three Proclamations.

All manner of persons that have appeared here this day, at this Court, and have further to doe here; Let them now come in, and they shall be heard, else every one may now depart and are discharged of their attendance, and not to appeare again at this Court, but are to keep their day again upon new warning.

And now having done with this Court, we come to speak of the Court Baron.

CHAP. 10.
What a Court Baron is, and of a Mannor.

Court Baron what it is.

THe Court Baron is an Assembly of Lord, Tenants, Steward and Bayliffe within the Mannor, to take care and inquire of causes concerning the Mannor, to see Justice duely executed; the Acts and Ordinances there passed to be recorded in the Rolls of the Court; The which Rolls are the Evidences of all Ordinances, Duties, Customes and conveyances that doe concerne the Lord and Tenants and are to be entred by the Steward, or other Officer indifferent between them, and are to remaine with the Lord, that he may know his Tenants, Rents, Fines, Customes and services. *Calth. f. 46.*

Evidence.

Rolls of the Court.

Or (briefly) this Court is a Court that every Lord of a Mannor hath within his Mannor, as inseparably incident thereunto. And this jurisdiction was doubtlesse Originally granted by the King to Lords of Mannors, who then were great men, and by continuance is claimed and taken by prescription.

Prescription.

This

This Court is said to be double, the one for the Triall of Title of their Land for the taking and passing of estates, Surrenders, Admittances, and grants, and herein the Lord, or his Steward (as the custome of the place is) is Judge. And this is called the Copyholders Court. And the other is for tryall of Actions under forty shillings after the example of the County Court. And in this sense the County Court is called and accounted a kind of Court Baron: And in this Court the Freeholders are Judges: Of this latter we have nought here to say, but of the former Court onely: howbeit this is still in force, and exercised within some Mannors every three weeks. And when the Court is of this double nature, the Rolls containe matters of both Courts: but the Court may be kept for Copyhold Causes, though it want Freeholders: And for the keeping hereof, there is need of a concurrence of the Lord, Steward, Freeholders, Copyholders, and Bayliffe or Reeve: And these all together can make a perfect execution of Justice in all that doth belong to the Jurisdiction of the Court.

2. Courts.

Judge.

County Courts.

Judges.

The Lord is chief to command and appoint the Steward. And he for matters of Title between the Copyholders is supream Judge in Law and Equitie; so that he occupieth two rooms, Chancellour in case of equity; Judge in matter of right. And hath a great command also in things peculiar to himself, and yet in some cases the Steward doth exercise the place of Supream Judge, between tenants in matter of title; He is in all places to direct and register, and record all the proceedings of the Court between Lord and Tenant, and between Tenants, and to be indifferent between them.

Chancellour.
Steward.
Iudge.

More particularly he may punish offences as not performing Customes, breach of By-lawes, *i.* not discharging duties, and the like.

Lord.

Secondly, decide controversies about the title of Land, wherein observe this:

1. That he cannot meddle with any other Lands, but the Lands of the Mannor.

2. He is not in judging tied to the strict rules of the Law, but as a Chancellour in Chancery may upon bill redresse matters in equity. *Co. of Copyhold f.* 122.

3. He

3. He is to make admittances.

4. He may make Licences: wherein obſerve; firſt, he can do more then the Steward, for he may in any Caſe make admittances out of the Mannor where he will, but ſo cannot the Steward. And he may grant a Licence to Alien by Deed (and in or out of Court as it ſeemeth) but ſo cannot the Steward without a ſpeciall cuſtome to inable, or a ſpeciall authority from the Lord ſo to do. *Co. of Copyhold. f.* 123, 124.

Steward. Admittances. Licenſe. Cuſtome.

The Freeholders which are ſuch as have Fee-ſimple Land parcell of the Mannor by Deed, theſe are Judges in all civill Actions, and in ſome caſes (by ſpeciall cuſtome) in matters of right between Copyholders; they are alſo to affere adjudge of amercements, and to returne and certifie judgements.

Freeholders duty.

The Copyholders which are ſuch as hold any of the Land parcell of the Mannor by copy of Court Roll, theſe are to inform and Preſent offences committed againſt the Lord within the Mannor, or otherwiſe according to that which the Steward ſhall give them in charge. And theſe being ſworn of the Jury, in this Court, are called the Homage,

Copiholders duty.

mages, being for the moſt part ſuch as owe Homage to the Lord of the Fee.

Bayliffes duty. The Bayliffe is to attend the Execution of the commands and Proceſſe of the Court, and to make return thereof when he hath executed them.

We cannot well go further to clear up theſe things till firſt we have made way thereunto, by opening ſome others: And becauſe a Mannor hath ſuch relation to a Court, that one of them cannot be, nor ſtand without the other; therefore we muſt of neceſſity ſpeake ſomething of the Mannor.

Chap. II.

What a Mannor is, and the parts thereof.

A Mannor is Land in the hands of a Lord, of whom many Tenants (two at leaſt) doe hold, to do ſuit of Court. And it is made up of two things, Demeſnes and Services.

Demeſnes. The Demeſnes properly are that part of the mannor which is in the Lord or his Bayliffe or ſervants hands, whereof the Tenant hath not, or ever had to doe; But in a larger ſenſe it doth comprehend

prehend all the Copyholds Lands alſo.

The Services all the Rents, Duties and performances of the Tenants which they are to performe and do to their Lord: For as a meſſuage or Lands cannot be called a mannor without Tenements thereunto belonging to pay rents, and do ſervices, but doth ſtill bear the name of a meſſuage or Lands; ſo if a man have Tenements which doe pay Rents and doe Services to him, and no Meſſuage or Lands whereupon to keep Courts, and to receive his rents and ſervices; this cannot be called a mannor: but a Seigniorie in groſſe. Services are of two kinds, (*viz.*) by Tenure and by Covenant: Services by Tenure are of two ſorts. As if a man at this day give Land in tayle, or Leaſe land for life or yeares, keeping the Reverſion; in this caſe there is a Service of Fealty incident to this Tenure between *donor* and *donee*, leſſor and leſſee: but this maketh no Mannor. But for the further opening of this, theſe things muſt be obſerved: ſome reſervations doe make neither Tenure nor mannor: as to doe Suit at the Lords Court when pleaſe the Tenant, to beat

Services.

Seigniorie in groſſe.

The kinds of Services

Tenure.

or kill the Lords Tenants that doe treſpaſſe in his Demeſnes: to come to the Lords Court, and there to doe nothing. But if it be to come there to affere the amercement or the like, it may be a Tenure tending to ſupport a Mannor. Some Reſervations do make a Tenure, but no Mannor; as to amend a high way, or to pray for the proſperous eſtate of the Lord, or to find the Lord and his dogs meat when they hunt the Fox in ſuch a place. Some reſervations do make both a Tenure and Mannor, as to do Suit of Court to the Lords Court, upon warning, though twenty miles diſtant, to amend the high wayes within the Mannor, to wait upon the Lord within the Mannor for a certain time, to ſay divine Service to the Lord and his Tenants in the Court houſe before the Court ſit. Some Reſervations make a Service but no Tenure, as to wait upon the Lord twenty mile from the Mannor, and the like.

2. A Mannor is made by continuance of time, and cannot be made at this day by any perſon or means whatſoever, not the King himſelf. And therefore if a man at this day be ſeiſed of twenty

Acres

Acres of land, and enfeoffe nineteen ſeveral perſons of nineteen Acres, and keep the twentieth Acre in his hands, and reſerveth ſuit of Court and other ſervices to be done by theſe nineteen Tenants, to the Court to be kept on the Twentieth Acre; albeit theſe eſtates be made by Deed indented, yet this is no Mannor but a Tenure in Groſſe onely. For a Mannor muſt be by preſcription, and the Services time out of mind. *Calthrop. fol.* 10, 11.

For as all Services will not make a Mannor, ſo thoſe Services which are by Covenant onely, or by Tenure, if they be made by agreement within the time of memory, they do not make a Mannor. Nor can the Lord, albeit his Tenant be never ſo willing, unite two Mannors in one, or annex any other thing to his Mannor, or make that a part, which is no part of the Mannor. *Coke of Copyhold, fol.* 53. 3. Union of Mannors.

And yet it is held, that if the Tenants voluntarily ſubmit themſelves to ſuch an innovation, and the ſame be continued time out of minde without contradiction, this may make an union, and one in name and uſe of two diſtinct Mannors;

ſo

ſo if one Mannor be holden of another, theſe two Mannors may be united by eſcheat; But otherwiſe what they doe in one Mannor is traverſable in another. *Co. of Copyholds. chap.* 31. 33.

And yet it is held that a man may at this day in ſome ſort enlarge a Mannor by adding ſome Services to it: As if the Lord give parcell of his mannor to hold by doing ſuit to the Lords mill within the mannor, the Lord may diſtrain for this, and it is held to be parcell of the mannor. So if the Lord make a gift in tayle, Leaſe for life, or yeares of parcell of the mannor reſerving Services in groſſe, by this the Services of an antient mannor may be encreaſed. And it hath been thought by ſome, that if a Lord have a mannor which doth extend it ſelfe into two Towns, and he grant the Demeſnes and Services in one Towne, that by this the grantee hath a mannor; but inquire of this, *Calthrop. f.* 11. But this is certaine that if any thing have the reputation of a mannor, or be uſually called a mannor, though in truth it be no mannor, yet it may be granted by the name of a mannor. *Calthrop. fol.* 13. And a mannor and Court of Copyholders,

Grant.

holders, by cuſtome may be without any Demeſnes. See after *fol. Co. of Copyholds, fol.* 52, 53.

Antient Demeſne mannors and Lands are certain antient Lands known by that name, and to be of that nature, which are recorded in the book called *Doomeſday*. This Land differeth not from other Lands, onely the Tenants of theſe Lands have certaine privileges above the Tenants of other mannors. As ſee them *Coke part.* 4. *chap.* 58. But the Court of this mannor is in the nature of a Court Baron, no Court of Record; a Court wherein the ſuitors are Judges: And the proceeding herein is as the proceedings are in other Court Barons. *Crompt. Iur.* 230, 231.

Antient Demeſne.

Judges.

Chap. 12.

The place wherein the Court Baron is to be held.

A Court Baron may be kept in any place within the mannor, as the Hundred Court may be kept any where within the Hundred, and is not like in this to the Sheriffes County Court which

which in ſome Counties is by diverſe Statutes to be kept in ſome ſpeciall places. But this Court cannot be kept in any place without the Mannor. And yet if a man have two or three Mannors, and time out of mind the Courts of all the three Mannors hath been kept in one of them; this may be good. *Co.* 1. *part. fol.* 57.

Chap. 13.

The time when the Court Baron muſt be kept.

This Court may be kept once every three weeks for the tryall of Actions: And the Copyholders Court for paſſing eſtates and making admittances, may be kept as often as the Lord pleaſe.

Chap. 14.

What perſons are bound to doe ſuit to the Court Baron.

All Freeholders of the Mannor are bound to do ſuit to the Freeholders Court; and all Copyholders and cuſto-

cuſtomary Tenants to the Copyholders Court. And all ſuch as are bound by Tenure or Covenant are bound to doe ſuit to both.

Chap. 15.

The juriſdiction and power of the Court Baron, and the Steward there, and what things are to be inquired of in this Court.

FOr ſuch an offence as a Steward in a Leet may Fine, the * Judge of this Court may Amerce: and this Amercement need not to be affered: and for this Amercement the Lord may diſtrain if he can preſcribe for it. *Co.* 11 45. *Br. diſtreſſe* 13. But regularly in this Court being no Court of Record, the Steward cannot do much without the Freeholders, nor can they together impriſon any man, and yet *Conſuetudo loci eſt obſervanda*, for in ſome places the juriſdiction is different from other places.

Fine.

* Who is intended.

Amercement.

Affered.

Preſcription.

Impriſonment.

In theſe Courts where are ancient Freeholders, they may heare and determine any civill Action for debt or dammage under forty ſhillings betweene parties

Triall of Actions.

parties living within the place, or without the place, for any cauſe ariſing within the place, which are entered after this manner; and therein they are to proceed according to the Common Law, and example of the County court: And as to this part of the juriſdiction, the Free-ſuitors alone are Judges, and the Steward can do nothing without them. *Co. 1 part.* 58.

Free ſuitors.

Judges.

Copyholders may in this Court try Titles of their Copyholds, and bring reall Actions by plaints for this Land; and theſe Actions may be heard and determined here. And as to this part of the juriſdiction, the Lord or the Steward (as the cuſtome of the place is) is Judge.

Trial of Titles.

Alſo in this Court one Tenant may prefer a bill to the Lord to be relieved in equity againſt another Tenant; and herein the Lord alone is Judge.

Judge.

The reſt of the power of the Court lieth in making eſtates, taking ſurrenders and making admittances, and the like.

This Court being only for the benefit of the place, and the Lord and Tenants of the Mannor; the Articles are

to

to inquire of ſuch things only as tend to that purpoſe. As of the defaults of ſuitors that owe ſuit to the court, *Kytch. fol.* 54.

Of ſuch as withhold or conceal the Lords Lands, Evidences or Franchiſes. *Kytch. fol.* 55, 56.

Of ſuch as encroach upon the Lords Lands or Royalties. *Kytch. ibid.*

Of ſuch Tenants as are dead, and what is happened to the Lord thereby. *Kytch. fol.* 55.

Of any forfeiture by a Tenant, Freeholder or Copyholder. *Kytch. ibid.*

If any incroachment by one Tenant upon another. *Kytch. ibid.*

Of any Surcharger or abuſer of the Common. *Kytch. ibid.*

Of any By-lawes broken. *Kytch. ibid.*

CHAP. 16.

The manner and order of proceeding in the Court Baron.

IN caſe of Actions tried here, and pleas of Land in this Court, the proceedings muſt be much after the example of thoſe courts out of which this is deriv'd the

the County and Hundred courts, and according to the rules of the Common law. And for the reſt of the Juriſdiction, the Steward doth uſe to ſwear ſome of the Tenants (which is called the Homage) theſe he doth charge with diverſe Articles, and upon them they do Preſent. And upon this Preſentment, the Steward is to proceed as upon the Preſentment in a Leet, ſave onely that (as ſome ſay) the Lord cannot bring an Action of debt, but is to diſtrain onely for the Amercement in this Court: 2 *H.* 4. 24.

Amercement.

Diſtreſſe. Debt.

For the manner of taking Surrenders, and making Admittances; ſee afterwards.

The manner of keeping this Court followeth.

Chap. 17.

The manner of keeping a Court Baron.

FIrſt a warrant is to be made to give notice of the Court, and it is good to give notice enough, ſix dayes at the leaſt; but if it be leſſe it is ſufficient in Law, unleſſe there be any ſpeciall cuſtome

for

for it. This warrant may be after this manner:

To the Bayliffe of the Mannor of *C.*

You are hereby required to ſummon and warn the Court Baron of *I. D.* Eſquire, to be holden for your Mannor of *C.* upon the third day of *Apr.* next, at the uſual place, (or at &c.) before me or my ſufficient Deputy, and that you warne all perſons that owe ſuit to the ſame Court, to be then there to do their Services. And that you your ſelfe be then there to make return hereof, and do your duty. Hereof faile not, &c. Given under my hand, &c.

W. S. Steward there.

Then the Style of the Court is to be entred thus.

Chel tenth.

The Court Baron there held before *W. S.* Eſq; Steward of *John Dutton* Eſq; Lord of the Mannor aforeſaid, according to cuſtome of the Mannor aforeſaid, ſuch day and year, *Old B. of Entries f.* 12.

Then command the Bayliffe to make an O yes, and ſay after you thus:

All manner of Perſons that have been warned to appear here this day, or have any thing to doe at this Court, draw neer and give your attendance.

Then if there be any Freeholders court for entring Actions, let them ſay:

If any man will enter any Plaints, let them come into the Court, and they ſhall be received.

And if any will enter any Plaint, it muſt be thus:

A. B. plaineth againſt C. D. of a plea of debt, or of a plea of Treſp. or of a plea of taking and unjuſt detaining of his beaſts or ſuch like.

And hereupon the proceeding for the ending of theſe ſuits muſt be as it is in the County Court, or in the Hundred Court. The defendant is to be called in by proceſſe of Summons and Attachment and diſtreſſe where the courſe is ſo: The Plaintiffe to declare, and the Defendant to anſwer as the caſe is; and the matter muſt be put to iſſue, and determined either by a Jury if both parties

agree to have it ſo, or the cuſtome of the court will warrant it; or by witneſſes; or, which is the moſt proper triall in all theſe courts in ordinary caſes, by wager of Law (that is) the Defendants own Oath that he oweth not the money, and ſuch honeſt men as the court ſhall aſſign to ſwear with him, that they are perſwaded he ſwears truth, except it be in caſes where wager of Law will not lie. And after Judgement, the debt or dammage recovered is to be levied of the parties goods, which being taken, may be ſold to do it. But for the method of proceeding herein, ſee in *Wilkinſons Treatiſe of Court keeping, f.* 148 and forwards; and in *Daltons Treatiſe of the Office of a Sheriffe, fol.* 157, 158, and forwards.

Then let him ſay, If any man will be eſſoyned, let him come into the court, and he ſhall be received.

And if any be eſſoyned let it be thus entred.

I. N. eſſoin and for ſuit of Court by *I. D.*

Then call all the Tenants, Freeholders, and Copyholders and Leaſeholders, that owe ſuit by Covenant, by their names, and apart.

Free-hold. { Amerc. ij^d. *A.B.* } { Are Freehold. of this Court, have made default, as appears upon their heads. } { Therefore are both amerc.

Cuſtomary Ten. { Amerc. ij^d. *C.D.* }

Homag. { *A.B.* *C.D.* *E.F.* *G.H.* } Jur. { *I.K.* *L.M.* *N.O.* *P.Q.* } Jur.

The Foremans Oath.

YOu ſhal ſwear that you as foreman of this Homage with the reſt of your fellowes ſhall duly inquire, and true Preſentment make of all ſuch Articles and things as ſhall be given you in Charge; and therein you ſhall ſpare no man, for love, favour or affection, nor Preſent any man for malice, hatred or envy, but according as things here Preſentable, ſhall or may come to your knowledge, by information or otherwiſe: So ſhall you make thereof true Preſentment, without concealment: *So help you God.*

Then

Then call the reſt of the Homage, and ſwear them by four at a time, thus:

The ſame Oath that *A. B.* your Foreman hath taken before you on his part, you and every one of you ſhall obſerve & keep of your parts: *So help you God.*

Then let the Bayliffe call them by name, and bid them ſtand near, and heare their Charge.

Then give them their Charge to this effect.

YOu good men that are ſworne; Our work is ſhort, and we cannot be long about it.

Our meeting is to keep a Mannor, Court, or Court Baron; we ſhall not ſtand to ſhew you the Antiquity; or Originall of this Court, but in a word or two by opening the nature, uſe and end of the Court. It is called a Court Baron, for that it is a Court incident to every Mannor, which antiently, or originally were the courts

and Mannors of Barons. For the King, having all the Demeſne Lands, with liberty to parcel it out, and reſerve what Services they thought fit, and to keep Courts within their precincts, granted great quantities of Land to the Barons and great Men; and they granted away part of this; ſome to one, and ſome to another, to hold of them by ſuch Services as they thought fit, and kept the reſt in their hands. And hereof Mannors were made: which conſiſt of Demeſnes and Services, and they exerciſed that power of keeping Courts within theſe Mannors, which hath been continued as now we find it: So that theſe Courts notwithſtanding at this day they are kept by preſcription and cuſtome; yet doubtleſſe, Originally came by the kings grant of them, the Fountain of juſtice, who can erect and make Courts. And gave to theſe Lords in their

Courts

Courts the juriſdiction they now have to redreſs miſdemeanors within their precincts, puniſh offences committed by their Tenants, and decide controverſies within the Juriſdiction.

This Juriſdiction is double, the one part is for the trial of the Title of the Lands, for the taking and paſſing of eſtates, ſurrenders of eſtates, admittances and grants: and herein the Lord or his Steward, as the cuſtome of the place is, is Judge; And the other is for the triall of Actions under Forty ſhillings, and herein the freeholders are Iudges; and one of theſe may continue though the other be gone. So that the main end of the Inſtitution of this Court was for adminiſtration of Juſtice, but ſo as it hath reference to the good of this place onely, and not to the publique as the Leet hath. In order to which end, you are put upon this office

and duty, being bound by your Tenure to it, and engaged by a ſolemn and ſtrict Oath to be faithfull in it. Your Office lieth in your Oath, and your Oath contains your Office; which is to inquire of, and Preſent the things which ſhall be given you in Charge which are ſuch things onely which concern the profit and advantage of the Lord and Tenants of the Mannor. In all which according to the conditions of an Oath rightly taken you are to do in truth, & to preſent what you know to be true, and perform what you have promiſed and undertaken (and to take heed of perjury) in Judgement, with due conſideration of your calling to, engagement and duty in this work; and in righteouſneſſe, to do Juſtice impartially between Lord and Tenant, and Tenant and Tenant, and to give to every one his own without reſpect of perſons, or any partiality: the

which

which in this work of Juſtice, you muſt carefully ſhun. And ſo we ſhall hold you no longer in the Porch, but lead you into the Houſe, and ſhew you your work contained in the Articles of your Charge, which follow.

Firſt, you are to inquire of ſuch things which concern the Lords benefit; as 1. Of ſuitors to this Court, and for this you are to know that all that owe ſuit to the Court, be they Copyholders, or cuſtomary Tenants, where ere they dwell, or of what age ſoever they be, are to attend here to be Amerced. Where Partners have land that oweth ſuit, the eldeſt ſhall doe the ſuit, and Jointenants may agree ſo: but of them and of Feoffees of land ſince, *Quia emptores* every one that hath any of the Land muſt do ſuit.

Item, if any of the Lords Land, Cuſtomes, Rents, Services, Franchiſes, Royalties, Services or Evidences

dences be concealed or withheld from him or Harriots, Wards, and the like without his consent, by whom, and what it is, and how long it hath been withheld.

Item, If any incroachment be made upon the Lords Land, or upon the Common, without License of the Lord.

Item, if any Tenant take away his Hawkes, Woods, Fish, Fowle or take any swarmes of Bees, Swans-eggs, Partridge or Pheasants eggs, Hawke or Hunt in his Mannor, or do him other trespasse in his Mannor, without leave of the Lord.

If any Tenant ought to grind at the Lords Mill and do not.

Item, If any of the Lords Tenants, Freeholders or others be dead, whose death is not yet presented, and by what Tenure he held his land, in knight service or in Soccage, or by Copy, and what is come to the Lord thereby, and who is his

next Heire, of what age he is, and in whoſe cuſtody, that it may be known what is due to the Lord; whether Wardſhip, Relief, Eſcheat, Harriot, or other profit hereby: If any Tenant be dead without heir generall or ſpecial; or if any Baſtard purchaſe land and die without heir of his body: for in theſe caſes the Lord is to have the Land by Eſcheat.

Item, If any Tenant have Alienned their lands, when, what, and to whom; and what is due to the Lord thereby, by the cuſtome; for the Lord muſt know who is his Tenant that he may know of whom to expect his Service.

If any Tenant that holdeth by Chivalrie, alieneth to defeat his Lord of his Wardſhip, and other profits.

Item, If any Tenant have committed any forfeiture. Freeholders may forfeit by committing felony,

in

in which caſe after the King hath his yeare and day, the Lord is to have the land, by aliening his land in Mortmain.

Copyholders may forfeit by doing waſte, letting houſes fall, or be very ruinous by want of repair, or if he have two Copyholds and impaire one to amend the other; by doing Felony, by cutting down or marring Timber contrary to cuſtome. By paſſing or letting their Land by Charter and Deed, for it muſt by ſurrender. By letting for longer then a year and a day according to the cuſtome. Or be a Recuſant, and the Lord no Recuſant. By not paying his rent, or performing his ſervices, as ſuit of Court and the like, eſpecially if he deny and refuſe it. Or if any Copyholder have ſurrendred into the hands of the Bayliffe or Tenants to the uſe of another according to the cuſtome, and the Bayliff or Tenant

do

do not preſent it at the next Court: This is a forfeiture if the cuſtome be not againſt it. If any reſcous or pound breach be made of a diſtreſs taken by the Lord or his Bayliffe within the Mannor, for any rent or ſervice due to the Lord. If any remove the ancient bounds between Lord and Tenant, or one Lord and another, or between Tenant and Tenant. And many other wayes he may forfeit his Copyhold.

Next we ſhall ſpeak of the things which concern the benefit of the Tenants: For this you are to inquire, if any take Common that hath none, or having Common keep more then his number, or the quantity of his Land, or Chaſe and rechaſe between two Farms in two Pariſhes, or put in Cattle not Commonable, or incloſe, dig, build upon, or otherwiſe abuſe and oppreſſe the Common without Licenſe of the Lord. Or any tenant incloſe the

Land

Land which ought to be in Common.

And lastly, you shall enquire of all other things by me omitted, which you know to appertaine to your Charge; and of all these and the rest, make and return in to me a true Presentment by four of the clock in the afternoon.

Then let the Bayliffe make an O yes, and adjourn the Court till after dinner as in the Leet. And then after dinner if any Surrenders or admittances be to be made, or Actions to be tryed, those things must be done: Otherwise call the Jury; take their Presentments, and swear two or more afferers, as in the Leet; and then discharge the Court.

Chap. 18.

Of a Copyholder and a Copyhold.

THe Copyhold eſtate is that for which a man hath nothing to ſhew but the Copy of the Rolls made by the Steward of the Lords Court. For the Mannor is, That the Steward doth write out a Remembrance of this (amongſt other things) that ſuch a one is admitted to ſuch an eſtate, and this commonly is tranſcribed in Parchment, which tranſcript is called the Court Roll: The copy whereof the Tenant hath under the Stewards hand; and this is all his evidence, and he can make no Title but by this Roll. Rolls of the Court.

The Copyholder is he which is admitted Tenant of any Lands within a Mannor, which time out of minde by uſe, and cuſtome of the Mannor hath been demiſed and demiſable to ſuch as will take the ſame in Fee-ſimple, Fee-taile, for life, yeares, or at will (as the cuſtome is) according to the cuſtome of the ſaid Mannor, by copy of Court Roll of the ſaid Mannor, *Weſt.* 1. *Symb. lib.* 2. *Sect.*

Sect. 646. *Coke* 4.25. *Litt. Sect.* 13.

So that to make a Copyhold eſtate, two things are requiſite.

1. It muſt be a parcell of a Mannor.

2. It muſt be demiſed, or demiſeable time out of mind, &c. And if either of theſe faile, the Copyhold Tenure is gone. For this cauſe the Tenure cannot be made at this day, unleſſe it be made by Act of Parliament. *Stat.* 35 *H.* 8. 13. *Co.* 1 *part. Inſt. f.* 58.

Theſe Tenants in moſt places are called Copyholders and cuſtomary Tenants, but in ſome places they are called Tenants by the verge, baſe Tenants; or bond Tenants, &c. and ſo are the Lands called; baſe Land, bond Land, &c.

The grant of this Tenant is, at the will of the Lord. So the Tenant was antiently a bond-man, and his Tenure a baſe Tenure; but time hath changed both, and now he and his eſtate both are ſo far free, that if he pay his rents and do his ſervices according to the cuſtome of the place, the Lord connot hurt him or his eſtate. *Co.* 4. 29.

And if he or any other evict him, he ſhall have relief againſt them, whereof ſee afterwards.

If

If any of the Tenants will transfer or alien any of their Copyhold Lands, it must be done by way of ſurrender to the Lord or his Steward, or ſome of the Tenants according to the cuſtome of the place to the uſe of ſuch perſon who is to have it for the time agreed upon between them, and then the party is to pay his Fine, and to have it from the Lord according to the ſurrender, and to have it entred; and a Copy of it according to the cuſtome of the place: and if the Lord after ſurrender refuſe to admit, or dye, or his eſtate end before admittance, he or his ſucceſſour ſhall be compelled to make the admittance. And by Deed, or otherwiſe ſuch a Tenant cannot alien his land without committing a forfeiture, no not by way of exchange with another Tenant. And if the Copyholder will deviſe it, he muſt ſurrender it to the uſe of his laſt will, and declare his intent. *Co. of Copyholds, f.*35. And for this the Tenant need not alledge a cuſtome, for this is common Law: So neither for a ſurrender out of Court into the Lords hands But to ſurrender to three of the Tenants, or to the Bayliffe or Reeve out of the Court, to

1. How the Copiholder may grant the land. Surrender.

Admit.

Alienation.

to make this ſurrender good there muſt
Cuſtome. be a ſpeciall cuſtome alledged for it. *Co. 1 part. f.* 59. And yet by a deed of Releaſe he may extinguiſh his right to a Copyhold wherinto another is before admitted, and hath ſuch an eſtate, as upon which the Releaſe may enter. As if a ſurrender be made out of Court to
Preſentment. the uſe of *J. S.* and it is not duely preſented according to the cuſtome, and therefore void; yet *J. S.* is admitted accordingly, and after he that hath the right, doth by Deed releaſe all his right to *I. S.* this will bar him and make good the eſtate. Contrary where the eſtate to paſſe by the releaſe, doth paſſe by way of enlargement. As if a Copyholder by Licenſe, leaſe for yeares, and then doth releaſe to the Leſſee for years. But I may ſurrender my reverſion into the Lords hands, and he may grant it to the leſſee. *Co. of Copyhold. fol.* 100. So where no precedent eſtate is by admittance, as if one diſſeiſe the Copyholder, and the Copyholder releaſe to the diſſeiſor, theſe releaſes are void. *Co.* 4. 25. One Copyholder being ouſted by another cannot releaſe to him; if a Copyholder be ouſted, and the Lord admit him that

ouſted

ouſted him, by his releaſe the Copiholder may extinguiſh his right. *Coke chap.* 114. And yet if a ſurrender be made out of Court upon condition, and preſented as abſolute, and ſo the admittance is made, the ſurrender by releaſe may make it good. *Co. of Copyhold. f.* 101. But if I be ouſted, and the Lord admit him according to the cuſtome, I may releaſe to him. If a Copyholder do bargain, and ſell his Copyhold land to his Lord without any Surrendor, it is ſaid this will paſſe it; but if his eſtate be an eſtate of Inheritance, *Contra per curiam M. Jac. B. R.*

2. Conſider according to Common Law.

Theſe ſtates are in ſome caſes ruled according to the Common Law, and in ſome caſes according to the cuſtome: And therefore if ſuch a Copyholder be put out of his land by his Lord, or any other; heretofore he had no remedie but in the Lords Court, or in Chancery, yet at this day he may have remedy againſt his Lord or any other by *ejectione firmæ*, or Treſpaſſe, or in Chancery as a man that hath ſuch an eſtate by Deed. *Co.* 4.21.29.22. &c. And if he make a Leaſe rendring rent, he may bring debt for it; and if one cut his trees he may

Ejectione firmæ.

have an Action of Treſpaſſe.

Eſtates in Feeſimple, taile for life.

The ſame words which will make eſtates in Fee-ſimple, Fee-taile for life, &c. upon a Deed will make eſtates by Copy: and therefore if a Surrender be to the uſe of *I. S.* without limitation of any eſtate hereby, *I. S.* ſhall have an eſtate for his life only, and yet by cuſtome in ſome places it is otherwiſe. And if a Copyholder in Fee Surrender *Habend'* after his deceaſe to the uſe of his childe, *in venter Sameie*, and the heir of this childe; and if it die before marriage, or full age, then to the uſe of *I. S.* and his heires; by this the father hath an eſtate for life, and the limitation to the child is void; and ſo it ſeems is the remainder alſo. *Co.*4,21,22. &c. For a Freeholder cannot commence *in futuro*, nor one Fee depend on another. *Simſons caſe adjudg. Mich.*13. *Ia. B.R.* And deſcents of this land as well as the creation of the eſtate ſhall be guided by the rules of the Common Law, except there be any ſpeciall cuſtome in the place to the contrary, the eldeſt ſonne ſhall inherit, *Poſſeſſio fratris facit ſororem eſſe haeredem*, of the Land in a Fee-ſimple, otherwiſe it is the iſſue of a

Co-

Copyholder in taile: This land may be entailed by cuſtome. *Co. of Copyhold. f.* 136. and the iſſue ſhall have a *Formedon in deſcender.* If one have iſſue, a Son and Daughter by one *venter*, and a Son by another, and the eldeſt purchaſe a Copyhold in Fee, and die without iſſue, the daughter ſhall have the Land. *Co. of Copyhold, f.* 143.

Entaile: Cuſtome.

Deſcent.

If one have a Copyhold eſtate to the heire of the mothers ſide, and he die without iſſue, it ſhall go to the heires of the mothers ſide, and ſhall rather Eſcheat then goe to the heires of the fathers ſide. But if I purchaſe Copyhold Land, and die without iſſue, and have no heires of my fathers ſide, it ſhall goe to the heirs of my mothers ſide. If there be father, uncle and ſon, and the ſonne purchaſe this Land and die, it ſhall go to the uncle, not to the father. So if there be three brothers, and the middle purchaſe this Land, and die without iſſue, the eldeſt ſhall have it. And if there be two partners or Tenants in Common of this Land; and one die having iſſue, his heire ſhall inherit, not the ſurviver. *Contra* of Joyntments. *Co. of Copyholds, Sect.* 50. *Calthrop. f.* 88, 89, 92, 93.

3 Consider according to custome

But in other things they differ from other Inheritances, and the rules of the Common Law; and therefore these Inheritances, except there be a speciall custome for it in the place, have not these collaterall qualities which concern not descent, as other inheritances have. For such Land so descended shall not be accounted Assets in the Heires hands to charge him upon an obligation, the wife shall not be endowed, the Husband not Tenant by the curtesie, descent shall not take away entrie. *Co.* 4. 23.

Assets.

Dower.

Curtesie.

A surrender made by a Tenant in tail of this Land (admitting it may be entailed) or by a Husband of the Copyhold, he hath in the right of his wife, makes no discontinuance. *Co. idem of Copyholds. f.* 144.

Discontinuance.

If the Lord enter into a Statute, or take a wife, and after the Copyhold become void, and in the Lords hands by Surrender, forfeit or escheat, whiles it is in his hands, it is liable to this charge: But if he grant it a new, according to the custome, the Copyholder shall hold his estate discharged of both. *Co.* 8. 63. 4. 23. The true reason is, because when the Copyholder is once admitted, he is

Statute.

in

in by cuſtome which is Paramount the grant; therefore if the Lord grant a rent charge, and then grant the Copy, yet ſhall the Copyholder hold the land diſcharged of the rent as it ſeemeth, though then he be not his Tenant. 8. *rep.* 63. b. For no ſtranger can be his Tenant without his conſent. *Calthrop. f.* 98. *Contra.* So if the feoffee of a Mannor on condition before the condition broken, make Copyhold eſtates, they are good. *Co.* 4. 4. 24. If the Copyholder acknowledge a Statute, and then ſurrender, the Land is not liable. *Calth. f.* 98. If Tenant in taile (without a ſpeciall cuſtome) or Copyholder in the right of his wife ſurrender, this is no diſcontinuance. *Co.* 4. 23. *Dyer* 263. So if the Lord make a Leaſe for yeares of the Mannor, (excepting all woods and underwoods) and the Leſſee make grants by Copy according to the cuſtome, the Copyholder ſhall have wood in theſe woods according to the cuſtome. *Co.* 8. 107. So if the Copyholder be uſed to have Common of Paſture or Eſtovers in the Lords woods or waſts, and the Lord Alien the woods or waſts to another in Fee, and after make a Copyhold eſtate

Condition.

Diſcontinuance.

Grant. Exception.

according to the cuſtome the Copy-
Common. holder will have Common there as hath been uſed. *Co.* 8. 63. But in this caſe the cuſtome in pleading muſt be laid ſpecially, otherwiſe it is of a Leaſe for life by Deed. As long as a Copyhold of Inheritance is in the Tenants hands,
Charge. it is not liable to any eſtate, or charge of the Lord, as *Dower*, *Curteſie*, *Elegit*, *Statute*, &c. but when it is in the Lords hands it is liable. *Co.* 4. 22. but a cuſtome in this caſe may make it chargeable, *Calth. f.* 88, 89. 92, 93.

CHAP. 19.

What grant of a Copyhold eſtate ſhall be eſteemed good or not.

1. In reſpect of the Mannor of which the Land is parcell, and of the Court in which the eſtate is granted.

DIvers things are requiſite to make a good grant of a Copyhold eſtate. 1. There muſt of neceſſity be a good Mannor and Court continuing: For a Copyhold eſtate cannot be made without a Court, and a Court cannot be without a Mannor, and then there muſt be a cuſtome for the allowance thereof, and this cuſtome muſt be in the ſame Mannor: A Lord to give the Copyhold,

a Te-

a Tenant of capacity to take, and the thing to be granted which muſt be grantable, and may be held according to the Tenure. But for the opening of theſe things it muſt be known, touching a Mannor.

1. That a Mannor cannot be made at this day.

2. Albeit it cannot be made at this day, yet it may be marred; For a Mannor may be diſſolved many wayes: As firſt, if the Court Baron (which is incident to every Mannor) be deſtroyed: For the Court and Mannor ſtand and fall together: And therefore if all the Freeholders but one eſcheat to or be purchaſed by the Lord, hereby the Mannor is deſtroyed: For there muſt be two freeholders at leaſt to ſupport the Court Baron, and two Copyholders at leaſt to ſupport the cuſtomary Court: So if the Lord ſuffer all his Copyholds but one to fall in hand or make a Feoffment of all but one, hereby the Mannor is diſſolved. But here this difference muſt be heeded; That there being (as we have ſhewed before) in every Mannor where are freeholders and Copyholders two Courts; A Court of Freeholders which is by Com-

Mannor deſtroy.

Court deſtroy.

Judge.

Common Law for the tryall of actions, wherein they are Judges, and a court of Copyholders which is for the ſurrendering and granting of eſtates, and making admittances, and wherein the Lord or his Steward is Judge, that one of theſe may ſtand without the other: and therefore if the Lord ſell the reverſion of all his Copyholds in Fee to one man, this man hath a Mannor and a Court to this purpoſe, and may do all touching Copyhold eſtates which the ſeller might have done, and he that ſells may do all that belongs to the Freehold Court, as he did before. *Co.* 4. 26. 6. 64. *Co.* 1. *part. fol.* 58. So if the Lord make a Leaſe for yeares of all his Copyhold Lands it ſeemes the Leſſee for the time of the Leaſe may keep Courts, and grant eſtates. But if the Lord make a Feoffment or Leaſe of one or of ſome of the Copyholds onely; it ſeems this Feoffee or Leſſee cannot keep a court and therefore the Mannor as to this parcell is deſtroyed. If the demeans be once by the act of the party ſevered from the ſervices in Fee-ſimple, or the Copyholds from the Mannor, here by the Mannor is deſtroyed for ever. *Co.* 4. 26. 6. 24.

If

If one have a Mannor and grant the Moity of it to another, hereby the Mannor is deſtroyed by *Inſt. Iones opinion.* *Quære.* So if the Lord ſell away the Inheritance of all the Copyholds to ſeveral perſons, hereby the Mannor and Court of Copyholders is diſſolved.

And if the ſeverance be but for an inſtant, and without any tranſmutation of poſſeſſion, yet the Mannor is deſtroyed; but by act of Law a Mannor may be divided: As when a Mannor deſcends, and is divided between two Partners, that one have one part of the Demeſnes and Services, and another the other part, each of them have a Mannor and a Court.

If one Mannor held of another eſcheat, they are united and continue both.

And yet if a Court Leet, Waif, ſtray, wreck, and the like be together by Preſcription, albeit the Mannor be deſtroyed, yet the Leet, Waifes, &c. continue. *Calthrop. fol.* 13. Franchiſe loſt.

2. As a Mannor may be diſſolved, ſo it may be ſuſpended for a time and revived again; As if a Mannor come to Partners, and one upon the diviſion hath all Suſpenſion of a Mannor.

the

the Services, and the other, all the Demeſnes, and after one of them die without iſſue, ſo that his part cometh to the other alſo: by this the Mannor is revived again. More ſtrong is the diſpoſition of the law then of man. *Co.4.26.*

Fortior eſt diſpoſitio legis quàm hominis.

The Court muſt be kept in ſome part of that which is within the Mannor, for if it be holden out of the Mannor it is void, except by cuſtome he having two Mannors, have time out of mind kept one Court for both. *Co. ſuper Lit. f.58.*

2. In reſpect of the Lord of the Mannor, and his eſtate.

2. The thing required to the making of a good grant by Copy of Copyhold Land is a good Lord: That is the party that makes the grant muſt be ſeized, (*i.*) he muſt be in poſſeſſion in, and have a good right or title to the Mannor, of part whereof the eſtate is made. For the opening of which poynt, theſe things are to be known. That any perſon who may be a good granter in a Deed, may be a good granter of Copyhold eſtate; for this any perſon man or woman that hath a lawfull eſtate in a Mannor for a time, may be a good Lord, to grant Copyholds, take Surrenders, make eſtates and admittances according to the cuſtome of the Mannor, notwithſtanding the diſ-

ability

ability of his perſon, or exilitie of his eſtate: And therefore it is held that a Lunatick or Man *non compos mentis*, an Infant, an Excommunicate perſon, a perſon outlawed in an Action perſonall; a Felon before his attainder by Outlawry, verdict, or confeſſion, being Lord of a Mannor may grant Copyhold eſtates for any time according to the cuſtome of the mannor, as another man may do, and the eſtates made by them are unavoidable. So a villain purchaſer of a mannor and Alienee in mortmaine may make Copyhold eſtates till the Lord do make his entrie. *Co. of Copyholds. f.* 89.

Non compos mentis. Infant. Outlaw. Felon.

A Tenant in taile for life, years in Dower, by the curteſie, by Statute or Elegit of the mannor may make Copyhold eſtates: as well as a Tenant in Feeſimple. So may a Tenant at will of a mannor by Copyhold, or at Common Law; and this of Copyholds in reverſion as well as Copyholds in poſſeſſion: And therefore if a Tenant for life of a mannor grant a Copy in reverſion according to the cuſtome, and die before the Copyholder; this is a good Copy in reverſion againſt all the ſucceeding Lords, Adjudge 29 *El. B. R.* Sr *Pet. Carews* caſ.

Leſſee for life, yeares, or at will.

If

If one ſeized of a Mannor for life, wherein are Copoholds of Inheritance, and a Copyholder doth ſurrender to the uſe of a ſtranger in Fee, the Lord may grant and admit accordingly, and this will bind him in reverſion, but if the Copyhold be only grantable for lives, it is ſaid then the Lord upon ſurrender cannot grant more then for the life of the granter; but if the Lord of a Mannor for or during the Minority of a Ward, of which the Copyholds are demiſable for three lives ſucceſſively and not ſeverally, if in this caſe the Copyholder dieth, the Lord may grant it being void for three lives at his pleaſure, and this ſhall bind him in the reverſion; or his heire at full age. *Calth. Read.* 50.

Quære.

If a Copyholder in Fee ſurrender to the uſe of the Lord for life, the remainder to a ſtranger in Fee, or keepeth the reverſion to himſelf, the Lord cannot grant this in Fee by Copy. *Nemo poteſt plus Juris in alium tranſferre quam ipſe habet.*

Grantee on condition.

So may a Feoffee or Leſſee of a Mannor on condition, till the condition be broken. And yet a Leaſe for life by Deed in this caſe will be avoided; And it is held

held by ſome, that if a Leaſe be made for life on condition, and the Leſſee after the condition broken, and before entry of the Leſſor make Copyhold eſtates, that theſe are good, becauſe this Leaſe is not void, but voidable at the pleaſure of the Leſſor. *Coke of Copyhold.* 89.

If the Feoffer or Leſſor after the condition broken keep court, and make Copyhold eſtates theſe are good, for the keeping of the court is an entry in law, *Calthrop. Read.* 94.

If Feoffee of a Mannor on condition to enfeoffe another of it the next day, the ſame day after he hath the Mannor make Copyhold eſtates, they are good; for it ſufficeth if he be Lawfull Lord for the time. But if a Tenant for life of a Mannor make a Leaſe for years of it, and dye, and then the Leſſee for yeares maketh Copyhold eſtates, theſe are avoydable by the firſt Leſſor: So if a Leſſee for yeares of a Mannor grant a Copyhold in reverſion, and before the reverſion happen the Terme is expired, the grant is void, and ſo it is if the Leſſee ſurrender his Terme, and before the Leaſe ſhould have ended, the reverſion hap-

happeneth, yet the grant is not good, *Co. of Copyhold.* 88.

Gardeinin Chivalry. A Gardeine in Chivalry that hath a mannor of the Wards may make Copyhold eſtates upon it. The Husband and Wife within a mannor, he hath in right of his wife, but not the wife alone may make Copyhold eſtates, nor may the Husband alone (as it ſeemeth) make eſtates.

Husband and Wife. If the Husband and Wife in Frank mariage make Copyhold eſtates, and they be after divorced, the eſtates made before the divorce are good; ſo if the Wife be after divorced for Infancy.

Deviſee. If one ſeiſed in fee of a mannor by his will in writing, deviſe that his Executors ſhall ſell or make Copyhold eſtates according to the cuſtome for payment of his debts, or the like, they may make good eſtates accordingly. *Co. upon Litt.* 58. and yet if the Lord deviſe that his friends ſhall keep Courts, or make Copyes and no more, this is not good. *Calth. fol.* 95.

So if one die ſeiſed of a mannor, having a Daughter his wife privily with child of a Son, the Daughter may make Copyhold eſtates till the Son is born.

A

A Corporation, Biſhop or Prebend ſeiſed of a Mannor, may make Copyhold eſtates. Corps Politick.

If a perſon that hath a Mannor after Inſtitution, and before Induction make Copyhold eſtates, it ſeemes theſe are not good; ſo if after Induction he doe not read the Articles, and he be after removed for this. But if he be deprived after for any crime his grants before are good, *Co. of Copyholds. f.* 89, 90. Parſons.

If the Lord acknowledge a Statute, and after make a Copyhold eſtate, and then it is extended, this will not hurt the eſtate. So if the Lord take a Wife, and then make copyhold eſtate, and then dieth, the Wifes dower will not hurt the eſtate, though ſhe be endowed of the Mannor. And yet if an heire after the Lords death make Copyhold eſtates, and after the Mannor is aſſigned to his Wife, ſhe may happily avoid this, *Co. of Copyholds* 84. Tenant by Statute. Tenant in Dower.

If the Lord make a Feoffment, in Fee, Leaſe for life, or yeares of all his Copyhold, the Feoffee or Leſſee may make Copyhold eſtates, take Surrenders, Admittances, &c.

But if the Lord grant the reverſion of

one Copyhold, neither he nor the grantee, nor both of them together are able to grant any Copyhold eſtate of this Land.

If the Lord releaſe all the ſervices of the Freeholders of the Mannor, or all the Freeholders eſcheat, yet the Lord doth continue a good Lord, and able to make Copyhold eſtates of the Copyhold Lands.

In all caſes where the Lord may make Copyhold eſtates *de novo*, he may take Surrenders, and make admittances.

Diſſeiſor. Abator.

But in theſe caſes and theſe perſons a Diſſeiſor, Abator or Intrudor in a Mannor, the Heire or Feoffee of a Diſſeiſor, Grantee of a Tenant in tayle, one that holdeth after his eſtate is ended as a Feoffee or Leſſee upon condition after the condition is broken, one that hath no eſtate at all, or no good eſtate, or the Copyhold is deſtroyed; theſe cannot make any Copyhold eſtate by way of voluntary grant, or take Surrenders, and make new grants accordingly.

Admittances.

And yet it is thought that a Diſſeiſor of a Mannor or any ſuch Lord that hath a poſſeſſion only of a Mannor, may make admittances upon deſcents, or do any

any ſuch like Act, and that this will bind him that hath right. *Co.* 4.27.8.63, 64. 1 *part.* 58.74. *Calthrop.f.* 98.94.90.91. *Co. of Copihold.* 36.80.87. *Dyer* 375.

And yet if the cuſtome be deſtroyed by granting away the Reverſion, or where there is one Copyhold only left, in this caſe he cannot make Admittances, or do any thing as Lord. *Co.* 4.27.

To make a good grant of Copyhold Land, there muſt be a good Steward of the Court wherein the eſtate is granted. And as touching this point, theſe things are to be knowne.

1 In reſpect of the Steward of the Manor. And of the Steward of a Court. Lunatick Infant. Outlaw.

1. Any man may be a Steward: And therefore if an Infant, Lunatick, *non compos mentis*, outlawed, or excommunicated perſon, be made Steward: all Acts that he doth according to his office are good.

2. He may be retained by word, as well as by Patent; otherwiſe it is if it be a Stewardſhip of the Kings Court. And any colourable authority may be ſufficient to make a man a Steward to this purpoſe; yea, it is held that a copyhold granted by an under-Steward without authority from the Lord or high

Steward is good. *Co.* 4. 3. *of Copyhold* 126 27. *Calthrop. f.* 73.

3. His authority is derived wholly from the Lord, whose person he doth represent, and under him in his absence he is Judge of the Court.

Judge.

4 He must do all in the Lords Name: As if he take surrenders, make Grants or Admittances, or give license to alien where he hath a speciall power from the Lord, or is enabled by speciall custome so to doe, he must do this in the Lords name. *Co. of Copyhold* 125.

Licenses.

5. The Steward cannot do so much as the Lord himselfe; for the Lord himself may make Grants or Admittances in what place he please, without as well as within the Mannor; but the Steward cannot do so without the Mannor. And the Lord may give license to his Tenant to alien his land by Deed. But it is doubted whether the Steward can so doe or not in Court without a speciall custome of the place, or a speciall authority from the Lord to enable him thereto. *Co. of Copyhold f.* 124.

Admittances.

License.

6. This Office may be forfeit many wayes, 1. By a buser; as if the Steward burn the Court Rolls, or be corrupt in Ju-

Forfeiture of Office.

Judicature or the like. 2. Non-uſer; as when he is bound by his Patent to keep Court at certain times of the year without requeſt, and the Lord be prejudiced by this omiſſion. 3. Refuſer; as if he be bound to keep Court upon demand, and do not, albeit the Lord have no prejudice by it, yet it is a forfeiture. *Co. of Copyhold. f.* 129.

Under-ſteward.

7. The Steward may appoint an Under-Steward. See for this, *Co. of Copyhold. f.* 132.

4. In reſpect of the Perſon which doth make the grant or ſurrender.

Any one that may be a good granter in a Deed at Common Law may make a good Surrender, or grant of Copyhold Land; and as to this point theſe things are to be knowne. 1. Any body corporate, or politique, being Lord, may make a Grant, or being Tenant may make a Surrender of Copyhold land. 2. Grants by Lords, and Surrenders by other Tenants, as Felons before Attaindor, Baſtard, Hereticks, Leapers, deafe, dumbe, or blind men are good. 3. He that is not a good granter, cannot make a good grant or ſurrender of Copyhold Land without a ſpeciall cuſtome to enable him thereunto. And hence it is, That Surrenders made by Infants, Aliens,

Lord or Copyholder.

Felon.

Baſtard.

Hereticks.

Leapers, &c.

Infants.

Aliens.

Ideots. &c. Ideots, such as are born deafe, dumb and blind, and women covert without their Husbands, are not good: And yet it is held that a woman covert being joynt Tenant with another may surrender her own part to the use of her Husband. But I doubt much of this. *Co.*4.26,27.*Co.*1. *part.f.*42.*of Copyholds.f.*90.*Calth.f.*93.

Feme covert. 4. A woman covert cannot surrender with her Husband, but she must be first examined by the Lord or his Steward, and this cannot be by the Tenants.*Calt. f.*86,87. 5. Such persons as may grant or surrender, cannot grant more then they have. And therefore if the Copyholder be a Jointenant, he can grant but his owne part; he that is copyholder for life onely, can surrender but for his life. And yet if there be two Jointenants of a Mannor, and a copyhold escheat, and one of the Lords grant this copyhold alone; this is good to bind his companion.*Co.of Copyholds f.*91.

Iointenant.

§ In respect of the person to whom, or to whose use it is made. Any one that may be a good grantee by Deed, may be a good grantee by copy, and a good copyholder. And herein these things are to be knowne. 1. A surrender or grant of copyhold Land may be made to a Lunatick, Bastard, man

of

of unſound memorie, perſon attaint of Felony, Major and Comminaltie, Infant, outlawed, or excommunicate perſon, bondman, or feme covert: But a Monk or Frier cannot be a copyholder. And it is doubted whether an Alien born, may be a good copyholder or not. *Perk. Sect* 52. *Co. of Copyhold* 97. *Calthrop. f.* 52. 2. The ſurrender to the uſe of a feme covert is good, till her husband diſagree to it. 3. In caſe of an Infant or feme covert as to the Lords ſervice, for the Infant, it muſt be done by the Gardein or Prochein Amy, and for the Wife by the Husband. 4. The Lord ſhall retain the Land of the Ideot, or Lunatick, till he come to himſelf: So ſome ſay for the Infants Land till he be of age. *Calthrop. f.* 52. 65. 5. A ſurrender may be of copyhold Land to the uſe of the Lord himſelf, and he may have a copyhold to his own uſe. *Co. of Copyhold. f.* 94. doubted by *Calthrop. f.* 52. 6. The Husband may ſurrender to the uſe of his Wife, and by a ſpeciall cuſtome the Wife may ſurrender to the uſe of her Husband, *Co.* 4. 21. 30. *of Copyhold* 94. 7. One Jointenant may ſurrender to the uſe of another Jointenant. 8. A ſurrender may be

Non compos mentis, &c.

Feme covert.

Lunatick.

Infant.

Husband and Wife.

Iointenant.

of copyhold land to the uſe of him that ſhall be Heire of *I.S.* or the next childe of *I.S.* or next Wife of *I.S.* or to him that *I.S.* ſhall name, is good: for nothing paſſeth till admittance. Otherwiſe it were of ſuch a grant by Deed, *Co. of Copyhold f.* 97, 98. Inquire. And a ſurrender to the uſe of the right Heires of *I.S.* being alive is void. 9. A good grantee may take by Atturney. *Co. of Copyhold f.* 95. 10. A grant of Copyhold Land may be to two or more, and they ſhall be Jointenants, *Kitch. f.* 11.

Incertainty

Atturney.

Jointenants.

6 In reſpect of the place where it is done.

The Lord of a Mannor himſelf in perſon may make any grant of copyhold Land, or take a Surrender, or make any admittance hereof, or a ſurrender, or deſcent in any place, as well without as within the Mannor, and as well without as within the Court. But the Steward muſt doe it within the Mannor, and in Court, or it is not good. And yet by a ſpeciall cuſtome of the place a ſurrender may be made to the Steward, or to ſome of the Tenants out of court, and this is good.

7 In reſpect of the thing granted.

The thing granted or ſurrendred muſt be at the time of the thing done parcell of the Mannor: for the opening of which

which point, theſe things are to bee knowne.

1. A Cuſtomary Mannor which hath copyholds within it, may be held of another Mannor, and be granted by copy as other land may be, *Co.* 11. 18. So may Houſes, Lands, Meadowes, or Paſtures, and whatſoever doth concern them which is of perpetuity and parcell of the Mannor, as a common advowſon, or fair appendant, the veſture of herbage of Land, Underwoods out of a great wood, and that without the ſoile, if they have been uſually demiſed by copy. And if the thing granted be incertain, it may be made certain by election as in other caſes of grants at common Law, *Co.* 1 *part. Inſt. f.* 58. *of Copyhold* 117, 118. *Co.* 4. 31. *Co.* 4. 31. 37. *Co. of Copyhold* 120. But ſuch things as lie not in Tenure, as a rent Bayliwick, or Stewardſhip, commons or advowſons in groſſe, which are in corporate Hereditaments, out of which no rent can iſſue, are not grantable by copy; So the Lords Demeſnes wch were never let by copy are not grantable by copy: And yet if in this caſe the Lord grant them by copy, he himſelfe cannot avoid the grant but

For the nature of it.

Incertainty

but it will be good againſt him for his life. Inquire how he ſhall plead it: as grant by copy or by Leaſe paroll.

Parcell of the Mannor.

2. The thing granted muſt be at the time of the grant, made parcell of the Mannor, otherwiſe the grant will not be good. And therefore if the Lord make a Leaſe for yeares of the reverſion of one of his Copyhold Tenements: This Tenement (Inquire 1. *Inſt.* 325. *a. Plow. Com.* 103. *b.*) during this term is no part of the Mannor, and therefore cannot be granted by copy in the Lords court. But this happily may be in time reunited to the Mannor, and then grantable. But if a feoffment be made with, or without a Deed by the Lord of the Mannor, of one Copyhold Tenement; by this the ſame is divided for ever from the Mannor, and cannot be granted by copy. And yet the grant made before the ſeverance is good. So if one grant his Mannor (except one Acre) and after grant this Acre by copy; this is not good, becauſe at the time of the grant it was not parcell of the Mannor. *Co.* upon *Litt.* 324, 325. *of Copyhold f.* 82. *Dyer* 281.

Demiſed or demiſable by Copy.

3. The thing granted muſt be demiſed, or demiſable time out of mind by copy;

copy; (that is) it is either let by copie at the preſent, or capable of being let by copie having been ſo let and not by Leaſe time out of minde. And if when it were laſt let, is was let by copie, and be now come into the Lords hands, and he never let it for many yeares together by Deed or otherwiſe; this hindereth not but that it may be let by copie. And in this caſe it matters not how it came into the Lords hands, whether by eſcheat, or forfeiture, or ſurrender: and yet if the Lord purchaſe the Copyhold of the Tenant, or it eſcheat, ſome have doubted if it be not extinct, and ſo not grantable again. But upon little reaſon as I conceive. *Calthrop. f.* 16. 86. 91. 90. *Co. upon Litt. f.* 58. *Calth.* 55. And if a Copyholder forfeit his Land by waſte, and a ſeiſure is awarded; but the Lord ſuffereth the Tenant to occupie the Land twenty yeares together without receiving rent; he may after grant it by copie. But if after ſeiſure awarded, a ſtranger enter, diſſeiſe him, and make a feoffment in Fee, and then the Lord reenter and grant it by copie: this is not good by *Calthrop. f.* 25. *Quare*, for a diſſeiſing and feoffment, cannot alter the nature of the

the Land. If a man will overthrow a Copihold eſtate under pretence that it hath been let by Indenture, or otherwiſe then by Copie, he muſt ſhew it to be within the time of mans memory: for if it hath been let by Copie for fiftie or ſixtie yeares, it will hardly be admitted to the contrary. *Calth. f.* 19. 85.

The Heire of a Copyholder in Fee, hath before his admiſſion ſuch an eſtate in the Land that he may ſurrender it, or bring treſpaſſe; and if he die, his Heire ſhall have it by deſcent, *Dyer.* 291, 302. *Co. of Copyhold.* 4. 21.

If a Copyholder ſurrender his Land, to the intent that a ſtranger may have a rent out of it; this is not a good Copyhold rent, by *Calthrop. f.* 92.

8. In reſpect of the Mannor and Order of the grant. And of Grants, Surrenders Preſentments and Admittances.

No Copyhold land can paſſe from the Lord to his Tenant, nor from one Tenant to another, but by way of grant, or ſurrender in the Court of the Mannor, according to the cuſtome of the place. And as touching this point theſe things are to be knowne.

1. In ſome grants a ſurrender is ſufficient without Preſentment or Admittance: In ſome an Admittance without a Surrender or Preſentment: In ſome a Sur-

Surrender and Admittance are both neceſſary, and in ſome a Surrender, Preſentment and Admittance are all neceſſary. As if the Copyholder ſurrender to the Lords uſe, there needs no admittance. And if the Lord make a voluntary grant of a Copyhold in his hands, no Surrender is needful but admittance onely. If the Copyholder ſurrender in Court to the uſe of a ſtranger, beſides the Surrender admittance is requiſite. And if the Surrender be made out of Court to the Lord himſelf, which the generall cuſtome will warrant, or into the hands of the Bayliffe, or of two of the Tenants, (which by ſpeciall cuſtome onely is warantable) in this caſe there muſt be beſides the Surrender, a true Preſentment of the Surrender in Court by the ſame perſons, into whoſe hands the Surrender was made, and an Admittance of the Lord according to the effect of the Surrender and Preſentment. *Co. of Copyhold, Sect.* 38.

2. A grant may be of Copyhold land in Fee-ſimple, Fee-taile, for life, or years, in poſſeſſion or reverſion, as the cuſtome expreſly or interpretatively will warrant it. *Co. of Copyhold, Sect.* 47. But

Fee-ſimple, Taile, Life, years.

the

the Lord without a cuſtome cannot grant a Copyhold in reverſion. 15 *Car. B. R.*

3. If the Lord having Copyhold land in his hand, grant it by Deed or Fine, to hold at will, according to the cuſtome of the Mannor; this is not good to make a Copyhold eſtate. *Calthrop. f.* 47.

Ancient Rent. 4. In all good grants of Copyhold eſtates, it ſeems the ancient rent muſt be reſerved, not only in quantity, but in all beneficial qualities. And therefore it is held, that if the ancient rent were in gold, and the new be in ſilver; or the old were payable at four dayes, and the new be payable at two dayes; theſe are not good Copyhold grants. But this (it ſeems) is to be underſtood of Copyholds of Inheritances, and Admittances into them. *Co. of Copyholds f.* 109, 110. *Calth. f.* 88, 89. 81.

Surrender. A Surrender is the giving up of the land by the Tenant to the Lord, according to the cuſtome: and this is entred in this manner: To this Court came *A.* of *B.* and hath ſurrendred in the ſame Court one meſſuage &c. into the hands of the Lord to the uſe of *C.* of *D.* and his heires, or the heires of his

his body iſſuing, or for terme of his life &c. and hereupon came the aforeſaid *C.* of *D.* and took of the Lord in the ſame Court the Meſſuage aforeſaid &c. To have and to hold to him and his heires, or to him and the heires of his body iſſuing, or to him for terme of life, &c. at the will of the Lord according to cuſtome of the Mannor, doing and paying therefore the rents, ſervices, and cuſtomes therefore due, and accuſtomed, and he giveth to the Lord for his fine &c. and hath done fealty to the Lord &c. Herein are many things to be known.

1. This may be abſolute, or upon condition; and it may be rendring rent on condition of reentry for not payment. *Coke* 4. 21. 30. And if he enter for the condition broken, it is in him as at the firſt without admiſſion.

2. It may be to the Lord himſelf, or his Steward or his Tenants, or his Reeve, or his Bayliffe, as the cuſtome is. And it may be to the Lord out of Court, but it cannot be to the Steward out of Court without a ſpecial cuſtome to enable it. *Mich.* 37. & 38. *Eliz. Brights Caſe.* Cuſtome.

3. It is in ſome caſes neceſſary, and in ſome caſes not: See for this.

4 When

4 When it is neceſſary it muſt be made: Firſt, by a Copyholder, and Admiſſion, otherwiſe it will not help. Secondly, it muſt be made to the Lord, that can make Copyhold eſtates, or ſome other to his uſe as the cuſtome is. Thirdly, if it be out of Court, it muſt be preſented at the next Court, according to cuſtome. Fourthly, the Lord muſt admit accordingly; or elſe (as ſome ſay) the ſurrender is void. *Kytch.* 82. 60. *Co.* 4. 27. *Co.* 1. *par.* 61, 62. *Calthrop. f.* 97. Fifthly, this cannot well be made by any other word, but by the word *Surrender*. And therefore if it paſſe in the Court by the word *give*, *grant*, *bargain* or *ſell*, this will not paſſe it, but the Heire of the Copyhold may a void it. *Co. of Copyhold* 103. And yet if a Copyholder come into the Court, and deſire the Lord to admit his ſonne into his Copyhold, ſome think this is a good ſurrender to the uſe of his ſonne. *Calthrop. f.* 57. But if the Tenant come to the Lord and tell him that he is willing for his ſonnes preferment, that he ſhall have his land preſently, and deſire the Lords agreement; who doth ſo, it is ſaid this is no good Surrender. And yet if the Homage doe after

Words of Surrender.

after Present it for a Surrender, it is more questionable; *Calth. f. 59.* If a Copyholder in the presence of other Copyholders of the Mannor say he is content to surrender his Copyhold to the use of *I. S.* this is not a good surrender. But if he say he doth surrender into the hands of the Lord to the use of *I. S.* If the Lord will thereunto agree, this is a good surrender whether the Lord will or no. So if the Tenant resigne his interest in the Court into the Lords hands, therewithall for him to do what he will, it seems this is a good surrender. If the Copyholder say in Court, he will be no longer Tenant to the Lord, and this be Recorded; this is no surrender. If a Copyholder for life, take a new estate for life; this is a surrender of his first estate for life: but if the second be by Deed, Inquire *Calth. 59.*

5. A surrender may be made of a Copyhold by Atturny, if there be no custome in the place against it, it is not of necessity that the Copyholder be present in Court. But if this power be by speciall custome, it cannot be done by Atturney: As if a Copyholder have a power to make a Lease for twenty years Atturney. Custome

after his death; Or an Infant have power to make a Leaſe at yeares of diſcretion, or a man may ſurrender out of Court to the Tenants, theſe things cannot bee done by Attorney. *Co. of Copyhold, 93. Co. 9. 76.*

Infant.

6. If a Copyholder in free ſurrender to the uſe of himſelf for life, and after to the uſe of *R.* his ſon for life, and after to the uſe of his laſt will; this is a good ſurrender, and the eſtate may be made accordingly. *Co.* 4. 23. But a ſurrender after a mans death to the uſe of a mans laſt will is not good. If a Copyholder in Fee ſurrender to the intent that the Lord ſhall regrant to him for his life, the remainder to his wife till his ſonne come to 21. yeares of age, and after to his ſon in taile, this is a good ſurrender, and is to be executed accordingly. *Dyer.* 251. And if two Jointenants bo, and one ſurrender his part out of Court into the Lords hands to the uſe of his laſt will, and by his will deviſeth his part to a ſtranger in Fee and die, and at the next Court this is Preſented; this is a good ſurrender, & by this the Jointure is ſevered. *Co. 1 part.* 59.

Iointenants.

7. If a ſurrender be to the Lord generally,

nerally, without saying to whose use; it is good enough. *Kytch.* 81.

8. If the Copyholder surrender to the use of another, and the Lord grant it to the *cestuy que use* not naming the surrender; this is good enough by *Calthrop f.* 99.

9. In a surrender it matters not whether the party to whose use it be, be precisely expressed, if by any circumstance he may be known. And therefore a surrender to the Archbishop of *Canterbury*, *Major* of *London*, next of his Kin, or next of his blood, his brother, his sister, or his son, may be good, and it may be made certain by averment. So if it be to a mans wife without naming of her, or to the high Sheriffe of *Norfolke*. But a surrender to the use of ones cousin or friend is void for incertainty. So if it be to the use of three or foure of *Dale*, or to the use of *A. B.* or *C. D. Co.* 4. 29. *of Copyhold* 96. Incertainty.

14. The surrender binds the Land immediately, so as the Lord cannot avoid or prevent the intention, nor prejudice him that is to have it by any Act that he can do. And yet it is rather a manifesting of the parties intention, then a pas- The operation of a Surrender.

ſing of an intereſt. For till admittance the ſurrenderer is Tenant to the Land, and ſhall receive the profits to his own uſe; and he muſt performe the Services. And yet he cannot paſſe the Land to any other, or make it ſubject to any incumbrance of his: nor hath the Grantee any intereſt to puniſh treſpaſſe, ſurrender, &c. And yet he cannot be defeated of it: And he may compell the Lord to admit him. *Co.4.26.29.of Copyhold fol.* 106. If I make a ſurrender to the Lord, to the intent, that he ſhall grant the Land to *I. S.* and the Lord refuſe to grant the Land to *I.S.* accordingly: in this caſe I may reenter upon the Lord: But *I. S.* hath no remedy, as in caſe where the ſurrender is made to the uſe of *I.S.* by *Calth.f.61.*

Countermaudd.

11. A ſurrender is not countermandable by the ſurrenderer. And yet if a Copyholder languiſhing in extremitie, ſurrendereth his land out of Court to the uſe of his couſin in conſideration of bloud, or to the uſe of his ſon in conſideration of naturall love, and after recover before Preſentment, happily this may be revoked. But if it be upon good conſideration, as for payment of debts, and for any

any ſumme of money paid, though it be made out of Court, yet it is as binding, as if it were made in the Court. *Co. of Copyhold* 106.

The Preſentment made out of Court muſt be afterwards duely Preſented at the Court according to the cuſtome of the Mannor. In which theſe things are to be knowne. Preſentment.

1. This Preſentment is the Information of men, ſworn to the Lord or Steward touching ſome things done out of court.

2. This is either generall, (i.) of all things, and by the whole Homage; or it is ſpeciall (that is) by ſome Tenants, or of one, or ſome things onely.

3. This by the generall cuſtome is to be made the next Court after the ſurrender, but by the cuſtome of ſome Mannors may be the ſecond or third Court after the ſurrender; and if it be not then Preſented according to the cuſtome, it is void, *Co.* 1 *part* 61.62. Cuſtome.

4. This alſo muſt be made in all things according to the ſurrender; otherwiſe it is not good. And therefore, if the Surrender be conditionall, and the Preſentment abſolute; all is naught: and yet if the Surrender be rightly

Preſented, and the entry of the condition be ommitted by the Steward, this upon proof may be holden. *Co. 1 part 61, 62. of Copyhold* 107.

5. No death will hurt the Preſentment, and therefore if the Surrenderer die, yet the Preſentment may be made after his death. And if he to whoſe uſe the ſurrender is made, die before Preſentment, the preſentment may be made thereof after his death, and thereupon his heir ſhall be admitted. So if *I. S.* ſurrender to the uſe of *A.* for life, the remainder to *B.* and *I.S.* die, and *A.* die before the Preſentment made, and after the Preſentment is made; in this caſe he in remainder ſhall be admitted. So if two ſurrender to the uſe of two joyntly, and one of them die before Preſentment; in this caſe the other ſhall be admitted to the whole. So likewiſe if the Tenants that take the ſurrender die, the Lord may notwithſtanding upon proof of it take in the Tenant by admittance, *Co. 4, 39. of Copyhold. Sect.* 40. *fol.* 107, *Co. 4. 28, 29.* And yet if a ſurrender be made to the Lord in the preſence of Tenants out of Court, and there the Lord doth grant it, but he dieth before

this

this is Preſented, or the Tenant admitted; this it ſeemeth is not good, *Calthrop.46.*

To the perfection of the Copyholders eſtate, Admiſſion, as that without which no eſtate paſſeth by the Surrender, is neceſſary. As touching which, theſe things are to be known. Admittance upon Grant or Surrender.

1. This is the receiving of the Tenant into the Copyhold by the Lord or his Steward according to the cuſtome of the place. And it is thus entred: At this Court *I. S.* prayeth to be admitted &c. whom the Lord by his ſteward hath admitted, and whereupon he is admitted tenant. *Co. of Copyhold* 125. *Calthrop. f.* 62.

2. Some make it expreſſe, and implied (i.) by acceptance of rent, &c. *Calth. f.* 62. It is alſo either upon a voluntary Grant, or Surrender, or upon a deſcent *Co.* 1. 140.

3. It is a judiciall Act of the Lords, and in caſe of a voluntary admittance, he is but an inſtrument, and may be compelled according to the cuſtome to doe it; for he is not eſteemed as owner to any purpoſe, and therefore he cannot prejudice the ſurrender in any caſe. And therefore as to this Act the Lords Title

to the Manner, whether he have it by right or wrong, is not much considerable, *C. of Copyhold*, 110.

4. This is necessary, for upon voluntary grants and surrenders, the Tenant hath nothing in the Land till admittance, and upon dissents he is not perfect Tenant till his admittance. *Co. of Copyhold.* 112, 113. Yet in case of a surrender to the Lords use no admittance is needfull, and where there is an implicite admittance there needs no expresse admittance: and where Tenant in possession is admitted, he in the remainder on the same Copy need not to be admitted: also the surviving Jointenant when they were both admitted ae first, need not to be admitted; and yet the heires of a Copartner must be admitted into a moity. *Calth. f.* 63, 64. And he that enters for a condition broken needs no admittance. *Calth. f.* 61. If a Copyholder for yeares die, the Executor needs not be admitted. So neither the husband of the wife Copyholder for yeares after her death. *Calth. f.* 95.

5. The Steward it is said may doe it out of court any where within the Manor, except there be any custome against

it

it, *Kytch.* 82. *Co. of Copyhold*, 123.

6. The admiſſion muſt purſue the Surrender, yet in ſome caſes albeit it do differ from it, it is good enough. And therefore if the Surrender be to the uſe of *I. S.* for life, or to the uſe of *I. S.* generally; and the Lord doth admit him in Fee; this is a good admittance for his life onely. And yet if the ſurrender be on condition, and the Lord omit the Condition, it is all void. *Co. of Copyhold* 112. So if the ſurrender be to the uſe of *I. D.* alone, and the new grant & admittance are to *I. D.* and *I. B.* this is good for *I. D.* and void for *I. B. Co. of Copyhold* 111, 112. So if the ſurrender be reſerving 10s. & the admittance be reſerving 20s. it is good for the 10s. But if the ſurrender be reſerving 20s. and the admittance is reſerving 10s. it is all naught; the contrary ſeems to be deduced from the caſe of *Weſtwick* 4. *rep.* 28. *a.* & *b.* So if the ſurrender be to the uſe of *I. S.* and the Lord admit *I. G.* and after admit *I. S.* it is ſaid in this caſe *I. S.* and *I. G.* ſhall have the land together. But if the ſurrender be to the uſe of *I. S.* alone, and the Lord admit *I. G.* alone; this is all void. *Co.* 4. 28. *of Copyhold* 111.

If

If the ſurrender be to the uſe of *A.* for life, the remainder to *B.* and *A.* is admitted; this is good for him in remainder. *Co.* 4. 23, 24.

7. The admiſſion muſt be according to the cuſtome, yet if the cuſtome will warrant the womans eſtate during widowhood onely, and the Lord admit for life, or the Lord admit not reſerving the ancient Rent in quantity or quality, this will not prejudice the heir, but that he may avoid it, *Co. of Copyhold* 109.

Rent.

8. Admittance cannot make a bad eſtate good, nor change the cuſtome, *Kytch.* 82. 86. See more of this after at Fine. *Numb.* 9 10.

Vpon a Deſcent.

The heir of a Copyholder in Fee hath ſuch a Poſſeſſion, and is ſuch a Tenant before admittance, that he may (paying the Lord his Fine which may be afterwards) enter, take the profits, ſurrender or bring an action of Treſpaſſe, and if he die, the heire ſhall have the Land, and there ſhall be a poſſ. of the brother upon his entrie. And yet it hath been doubted if a Copyhold deſcend to a feme Covert, and the Husband take the profits, but ſuffer a Court day to paſſe without admittance, whether he ſhall be Tenant by

by the Countesse or not. *Dyer* 291, 292. *Calth.* 60. But in admittances upon a grant or surrender; as if one surrender to the Lord to the use of *I. S.* and the Lord grant it accordingly, it is otherwise; for there the Tenant hath nothing till admittance. But the heire of a Copyholder shall not be sworn of the Homage, nor bring a Plaint in the nature of an Assise till admittance. So that an admittance in this case is rather for the benefit of the Lord to help him to his Fine, then to strengthen the Title of the heir. But the heire is in most places bound under pain of forfeiture of his estate, or some other great penalty to be admitted, and therefore he must be admitted. *Co.* 4. 23. *Dyer* 291. *Co. of Copyhold* 113, 114..117. *Calthrop. fol.* 62.

9. Upon every admittance there is Fealty due to the party admitting, by the party admitted; a thing inseparable to the person which cannot be done by Deputy, and yet if the Lord will accept it, or dispense with it altogether, it is well enough. *Co. of Copyhold, fol.* 95. 10. There is also a Fine due upon every admittance: See after. Fealtie. Fine.

There is in most places a Ceremony used

uſed in the paſſing of the Lands. In ſome places there is the giving and taking of a turf and a twig; in ſome places the giving and taking of a glove; in ſome places the giving and taking of a ſtraw, in ſome places the giving and taking of the hand; but in moſt places the Ceremony is by giving and taking of a rod. And albeit the grant or ſurrender may be good without this Ceremony, yet it is not ſafe to omit it. This the Copyholder that doth ſurrender doth uſe to give to the Steward or Bayliffe to deliver over to the party, to whoſe uſe the ſurrender is made in the name of ſeiſing: And herein Cuſtome of place is to be obſerved.

or a ſtraw with a knot in it

How Grants & Surrenders ſhall be taken.

1. If a ſurrender be made to the Lord in generall, without expreſſing to what uſe, it ſhall be taken to the Lords uſe. *Kitch.* 81.

Fee-ſimple

2. The ſame conſtruction (for the moſt part) which the Law maketh upon words in a Deed, it will make upon a Copy. And therefore it is, that a Copyhold eſtate made to one and his heires males or heires females, is accounted a Fee-ſimple, though it be otherwiſe in the Kings grant. *Co.* 4. 29, *of Copyhold f.* 139. So of a grant to one and to his blood inheri-

heritable, or to a Major or Commonalty or other Corporation, where no eſtate is named. So if I ſurrender to one and his heires, and he reciting this doth ſurrender it to my uſe in the ſame manner as I ſurrendred to him: So if I ſurrender to *I. S.* as large an eſtate as he hath in the Mannor of Dale, and he hath a Fee-ſimple in that mannor, in all theſe caſes the Law will conſtrue it to be a Fee-ſimple.

Fee-taile. *Co.* 4. 29. *of Copyhold* 132. If a Copyhold be ſurrendred to a man and to his ſeed hereditable of the bodie, or to a man and to the heires of him procreated, or to a man in Franck-marriage with his wife: In the firſt of theſe caſes an eſtate taile paſſeth without the word *heires*, in the ſecond without the word *body*, and in the third without either. *Co.* as before.

For life. If a Copyhold be granted to a man in Fee-ſimple, or to a man and to his blood forever, or to him and his aſſignes forever, without the word Heires, that is onely an eſtate for life. So if ſuch a grant had been to an Abbot and his heires: So to *I. S.* and his heires ſo long as *I. D.* ſhall live. And yet if the grant be to *I. S.* and his heires ſo long as ſuch a tree ſhall grow in ſuch a ground; this

ſhall

ſhall be a Fee-ſimple. *Co.* as before. If this land be granted to two men and to heires, without *their* : by this no Inheritance is made, and they are Jointenants for life onely. Yet if it be granted to *I. S.* and heires without *his* ; hereby *I. S.* hath a Fee-ſimple, and not an eſtate taile. And if it be granted to a man and to his children of the bodie ; this is no eſtate tayle for lack of the word [heires] *Co.* as before.

Jointenants.

If the grant be to a man and the iſſues males of his body, by this is made an eſtate for life.

If this Land be granted to three, To have ſucceſſively; by this they are Jointenants, and ſhall take together unleſſe the cuſtome (as in moſt places it doth) doe otherwiſe conſtrue it. *Co.* as before.

If there be Copyholder for life, the remainder to another in Fee, and the Copyholder for life, doth ſurrender to the uſe of another in Fee, and the Lord admit accordingly ; by this there paſſeth an eſtate for life onely, *Co. of Copyhold. f.* 91. So if the ſurrender be to the uſe of a ſtranger for life, and the Lord grant in Fee ; this is good for life onely. *Calth. f.* 61. So if the Lord grant a Copyhold

pyhold for life, where an eſtate in Fee is warrantable; and this Grantee doth ſurrender in Fee to the uſe of a ſtranger, and the Lord admit him accordingly; by this it is ſaid the Fee doth not paſſe. *Co. of Copyhold. f.* 92. If the ſurrender be to the uſe of a laſt will, and the ſurrender deviſeth it to two, and one of them onely is admitted according to the will; by this both of them ſhall have it. *Co. of Copyhold.* 98.

If one Copyhold be between two Jointenants in Fee, and one of them ſurrender his part out of Court to the Lord according to the cuſtome to the uſe of his laſt will, by which he doth deviſe it to the uſe of a ſtranger in Fee; and dieth; and this is Preſented at the next Court: hereby the Jointure is ſevered, and the Deviſee muſt be admitted to a Moyety of the Lands. *Co.* upon *Litt.* 59. If a Copyholder ſurrender to the uſe of his wife for life, the remainder to the right heirs of the husband and wife; the wife dies, and the husband doth ſurvive: In this caſe if he have no iſſue by his wife, his heire ſhall have it, by the opinion of *Calthrop. f.* 82. And yet if the wife have iſſue by another husband, it is doubted. Deſcent.

And

And it is ſaid that the husband and his heires ſhall have the Land; yet if the husband had firſt two ſons, the heirs of the husband, and the heires of the wife ſhall have the Land in common, after the deceaſe of the wife, *Calth.f.* 83. If Land be given for life, the remainder to two men and their heires, in this caſe they cannot have one heire, and therefore if the Tenant for life die before them in remainder they ſhall be Jointenants. But if neither of them be alive when the Tenant for life dies, then the heires of them in remainder ſhall hold in common. *Calth.f.* 84.

If a Copyhold be ſurrendred to the uſe of *I.S.* and his heires, till he marry *A.G.* and then to the uſe of them two in ſpeciall taile; this is good, and ſhall enure accordingly. *Calth.f.* 22.

If a Copyholder ſurrender to the uſe of a ſtranger, in conſideration that the ſtranger ſhall marry his daughter before ſuch a day; in this caſe if the marriage ſucceed not, the ſtranger ſhall take nothing by the ſurrender. But if the conſideration be that the ſtranger ſhall pay ſuch a ſumme of money at ſuch a day; albeit the money be not paid, yet the

the ſurrender is good. *Calthrop. fol.* 37.

If the Copyholder in conſideration of 20ˡ. to be paid by *I. S.* doth make a ſurrender of his Land to *N. R.* this ſurrender ſhall be to the uſe of *I. S.* and not to the uſe of *N. R.* But if in the Copy the uſe be expreſſed to *N. R.* and no conſideration mentioned, the uſe expreſſed ſhall ſtand againſt any conſideration to be averred. *Calth. f.* 37.

If a Copyholder ſurrender his Land to the uſe of *I. S.* ſo that *I. S.* pay 20ˡ. ſuch a day if he pleaſe; this is an abſolute, not a conditionall ſurrender. *Calthrop. f.* 39.

The payment of the Fine by the Tenant is neceſſary to the continuance, but not to the creation of the eſtate, for the eſtate is made perfect without the Fine-payment: but for the more full underſtanding hereof, theſe things are to bee known. 9. In reſpect of the payment of the Fine: And of a Fine.

1. A Fine is a ſumme of money to be paid to the Lord for an income into the Lands.

2. This in ſome places is certain, and in other places is uncertain, and where it is certain the Lord cannot increaſe it.

3. By generall cuſtome this is to bee Cuſtome.

Admittances. payd onely upon admittances, but it may be alſo by ſpeciall cuſtome upon licenſes granted to demiſe by Indenture.

4. The Fine is to bee paid upon admittances in theſe Caſes following: (*viz.*) Where the Lord after a Copyhold come into his hands, and he make a voluntary admittance, and where a Copyholder doth ſurrender to the uſe of a ſtranger, and the Lord doth admit him to whoſe uſe the ſurrender is made, and where a Copyhold of Inheritance deſcendeth, and the heire is to be admitted; So where the wife is to come in as Tenant in Dower, or the husband as Tenant by the courteſie: and ſo alſo where one doth enter as a generall or ſpeciall occupant. And ſo alſo where the Copyhold Lands of a Bankrupt are to be ſold upon the *Stat. of* 13 *Eliz.* 1. in all theſe caſes the Tenant is to be admitted, and to pay a Fine. So alſo if a Copyhold be ſurrendered to the uſe of one for life, the remainder to the uſe of another, and the Tenant for life die; he in remainder muſt pay Fine upon his admittance. So where the Habend' of the grant is ſucceſſive, and one of them die, the next muſt be admitted and pay Fine. So if

two

two Copartners or Tenants in Common be, and one die, and the whole descend to the other, there must be Fine upon the admittance. But if there be two Joint-tenants, and one of them die, and the other come to the whole by survivourship; or one take a wife, a Copyholder in Fee; or marry with the termer of a Copyholder; or a Copyholder be disseised, and then enter upon the disseiser or recover by plaint in the nature of an Assise; or a Copyholder in Fee surrender for life, reserving the reversion, and the Lessee for life dieth; or a Copyhold be granted on condition, and the condition is broken, and the granter reentereth; or the Lord enter upon a villein, that hath purchased a Copyhold; or the Bayliffe is by custome to have the Wardship of an Infant: in all these cases there needs no admittance, and therefore no Fine is to be paid. And yet if a Copyholder die seised and a stranger abateth, and the heire recovereth by plaint in the nature of an Assise of Mortdancester: upon this recovery an admittance is to be made; and therefore a Fine is to be made. *Co. of Copyhold Sect. 56. in toto.*

nec ad
mittan
nec fine

5. If the Lord uſe to take for his Fine ſometimes 2d. ſometimes 4d. ſometimes 6d. an Acre; this is ſo incertain, that it ſhall be ſaid to be arbitrary. *Calth. f.* 25.

10. In reſpect of entry in the Rolls of the Court.

The Steward of the Court muſt take care to record and inroll all the conveyance of eſtates. For ſome have held, That if the Lord in open Court grant a Copyhold eſtate, and no entry is made hereof in the Court Rolls, that the grant is not good, and that no collaterall proof will make it good. *Calthrop. f.* 47. But if the Tenant have no Copy, or loſe his Copy, the Roll of the Court is a good evidence. And if theſe Rolls be loſt, it is thought cleerly it may be ſupplyed by proof. *Calthrop. f.* 47. And yet if Bylawes be made and entered upon the Rolls, and the Rolls be loſt, the By-laws are gone, otherwiſe it is of Cuſtomes & Priviledges inrolled and loſt. *Idem.*

Bylawes. Cuſtomes.

11. In reſpect of cuſtome: And of Cuſtomes.

That the grant made by Copy of Court Roll may be good, it muſt bee made according to the cuſtome of the Mannor, and that cuſtome muſt be according to Law: but as touching cuſtomes theſe things are to be known.

Cuſtome what?

1. A Cuſtome is a Law or right not written, which being eſtabliſhed by long uſe

uſe, and the conſent of our Anceſtours hath been and is dayly practiſed.

2. Though Cuſtome, Preſcription, Uſage and Limitation be much of affinity, and one of them be taken for another, yet they differ much; For,

1. Cuſtome can have no beginning ſince mans memory, but Preſcription may. Preſcription.

2. Cuſtome toucheth many men in common; that they by continuance of time have gotten a right, and this is alledged thus, That in ſuch a place is ſuch a Cuſtome; but Preſcription toucheth this or that man, when he by continuance of time hath obtained a right againſt another man, and this is perſonall and alledged in the name of ſome perſon in certain thus. That he and his Anceſtors, and thoſe whoſe eſtates he hath time out of mind, &c.

3. Uſage is the efficient cauſe or life of both, for both loſe their being if uſage faile. *Calthrop. f.* 17. *Co. of Copyhold Sect.* 33. Vſage.

4. Limitation, is where a right may bee obtained by reaſon of a non-claime by the ſpace of a certain number of yeares, differing in account of time Limitation.

from Cuſtome and Preſcription.

1. The meaſure whereof is ſo long as mans memory cannot remember the contrary, (that is) that no man alive hath heard or knoweth any thing to the contrary. But limitation hath a certain time of beginning and end.

2. Cuſtomes are either generall, as which is part of the Common Law uſed in all places alike: Or particular, which are uſed onely in ſome places; as in *Kent*, *North-Wales*, *Gavelkind*, *Burough English*. And theſe again are either diſallowing what generall cuſtomes doe allow: As that the Copyholder ſhall not ſell his land to a ſtranger, and compell the Lord to admit him, till he hath firſt offered it to the next of bloud, or next of kin, or next neighbour from the ſun riſing, who giving as much as the party to whom the ſurrender is made ſhall have it. Or elſe they bee ſuch as doe allow what generall cuſtomes do diſallow; as for a Copyholder to let his land by Deed for longer time then a year without licenſe, which by the cuſtome of ſome Mannors he may do: Cuſtome from certain cauſe reaſonable uſed takes away the Common law. *Ca. of Copyhold Sect. 33.*

Conſuetudo ex certa cauſa rationabili uſitata privat communem legem.

4. To

4. To know what cuſtomes are good and what not, theſe rules muſt firſt bee taken. Firſt, Cuſtomes and Preſcriptions muſt be reaſonable. 2 *Ed.* 4. 24. Secondly, they muſt be according to common right. 42 *Ed.* 3. 4. Thirdly, they muſt be upon good conſideration. 5 *Hen.* 7. 9. Fourthly, they muſt be compulſary, not voluntary. 42 *Ed.* 3. *Avowry* 66. Fifthly, they muſt bee certain. 13 *Ed.* 3. 4. Sixthly, they muſt be beneficiall to them that claim them. 31 *Ed.* 3. Preſcription. 40. 28. Seventhly, it cannot help a man to that which is gained onely by matter of Record. Eightly, it cannot extend to a thing newly created. Ninthly, they need not bee uſed dayly and hourely, but according to time and occaſion. *Calthrop.* 22, 21. Tenthly, Non-uſer, as if the Lord hath been uſed to have work-dayes, and have not had them for twenty yeares together; this will not hurt the cuſtome. *Calthrop. f.* 25. Eleventhly, cuſtome may oppoſe the Common Law, but not a Statute Law. *Calth.* 87.

Hence it is that theſe following cuſtomes are not allowed to bee good, (viz.) That no Tenant ſhall uſe his Common by putting in of his cattle in fields ſowen For Common.

ſowen after ſeverance of the corn till the Lord put in his cattle, for he may chooſe if he will to put in at all.

To have a Fine for a treſpaſſe or other cauſe.

That if any mans beaſts be taken damage feaſant upon the Lords Demeſnes, he may keep them till the owner give him ſuch amends as he ſhall pleaſe, for this is to make him judge in his own caſe. And yet if the cuſtome be that if the Copyholder treſpaſſe him, and it be preſented at Court, that this ſhall be a forfeiture, is good. *Calthrop. f.* 29.

That every Copyholder ſhall pay the Lord a certain ſum of money for every Court he keeps. Or that he ſhall never keep a Court till when it pleaſe him, for this Court being to doe Juſtice muſt be gratis. And yet ſuch a cuſtome alledged to be for the keeping of an extraordinary Court is good.

That every ſtranger that ſhall make a Pound-breach, ſhall pay 1*l.* and yet it is held that a cuſtome laid, that every Tenant, which ſhall make a Pound-breach ſhall forfeit 5*l.* *Calthrop. f.* 31.

That every one that rides through the Kings high way within the Mannor, muſt pay the Lord ſuch a ſumme of money. And yet if it bee that every one that

that passeth over such a bridge within the Mannor which the Lord doth maintain; it is good enough.

That every Copyholder that doth marry, or shall marry his daughter, shall pay so much to the Lord for a Fine. And yet where the custome doth admit the husband Tenant by the courtesie, and wife to be Tenant in Dower, or to have widowes estate of the Copyhold, that in these cases they shall pay a Fine, is a good custome.

That every Copyholder shall hold his land without paying any rent or service to the Lord. And yet it is held a good custome to prescribe by fealty for all manner of services, is held good. *Calthrop.* 29. So a custome may be good to exempt one Tenant from that which all the rest of the Tenants doe beare and good. *Calthrop. f.* 77.

That every Copyholder shall give to the Lord so much in the time of warre every moneth to beare his charges. And yet if it be that he shall pay so much to the Lord, for this purpose it is good; the reason of the difference is, because a payment is compulsary, a gift voluntary. Incertainty.

That

That when one Copyholder dieth, another of the Copyholders (and say not which) shall hold the land for the yeare following. And yet if it be, that if a Copyholder die without heire, the eldest Tenant of that name within the Mannor shall have the Land; this is good. *Calth. f.* 31.

For Fine. That the Lord shall have for his Fine 2d. rent an Acre, and when he please 4d. an Acre. And yet happily if the Lord prescribe to have 2d. an Acre rent in time of peace, and 4d. in time of warre; this may be certain enough and good.

To doe waste. That a Copyholder shall cut down what timber he pleaseth, fire, pull down or destroy the houses, or let them fall. And yet happily a custome that the Tenant shall cut down more then ordinary, or that the Tenant shall have necessary fireboot, &c. that he may sell underwoods and shrowds, may be good.

To pay a Fine. That every Tenant shall pay a Fine at every alienation of the Lord. And yet if it be that every Tenant shall pay a reasonable Fine at the Lords death: or that a Fine shall be paid at every death or alienation of the Tenant: or that the Lord shall admit without Fine, if the usage

uſage have been ſo, *Calthrop. fol.* 40. Theſe and the like cuſtomes are allowed to bee good: but theſe following cuſtomes are diſallowed. (viz.)

That the wife of a Copyholder ſhall during her life or widowes eſtate hold all the Land.

That the Tenant ſhall have Common in the Lords wafts. To have Common.

That if he that hath right, claim not the Land within a yeare and a day after the Anceſtours death, he ſhall loſe it: and yet this will not bind an Infant.

That the Lord may grant for one, two or three lives in reverſion.

That a ſurrender may be made to the Bayliffe, or Reeve, or two or more Tenants out of Court.

That the ſurrender made by the Tenant in taile, ſhall barre the iſſue in taile. To make a Surrender.

That the Lord may keep his Court at another of his Mannors.

That the Lords Steward or Bayliff may grant Copyhold eſtates to the Tenants.

That a feme Covert may grant her Copyhold eſtate to her husband by ſurrender.

That an Infant of yeares of diſcretion may ſurrender.

That

That the new Tenant ſhall pay a Fine to the Lord, as he can agree upon his admittance.

That Proclamations bee made three Courts one after another, and if the heire come not and pay his Fine for admittance hee ſhall loſe the Land. *M.7. Jac. B.R. Lyfords caſe.*

That the Copyholder may let for longer time then one yeare without Licenſe.

To ſurrender out of Court.

That an Inheritance ſhall paſſe by ſurrender in the Lords Court without his leave, and be delivered over by the Bayliffe to the Feoffee according to the Deed to be inrolled in Court.

If the Lord preſcribe, that whoſoever take a diſtreſſe within his Mannor, he muſt put him in his Pound for a time; this is not good, for it is no benefit to him. But if he adde further, that the Lord is to have ſo much for the impounding, it is good.

Preſcription.

The Lord may not preſcribe to have Felons goods, Fugitives goods, Deodands, becauſe they cannot be forfeit till they appear of Record: but Waifs, Eſtrayes, wreck, and ſuch like things, may be gained to the Lord by preſcription, for

for they may be gained by uſage without matter of Record.

That the wife of the Copyholder ſhal be Tenant in Dower, husband Tenant by the courteſie,(an Inquire may as well be made of this, as of entayling Copyholds; ſince this Tenant by *Elegit*, *&c.* commenced by Statute which is within the memory of man)or a ſtranger tenant by Statute Merchant,(and ſo no cuſtom can be of it. *Co. of Copyhold, Sect.* 47.)or ſtaple of the Land in the hand of the Copyholder, are good cuſtomes. *Co. of Copyhold* 136.

That the Tenant may make a Leaſe for twenty yeares after his death, is a good cuſtome, *Co. of Copyhold f.* 93. To make Leaſes.

That the Tenants ſhall pay the Lord every fourth yeare the double rent, and every ſixth yeare a halfe yeares rent, is a good cuſtome: ſo that when they ſow their Land, they ſhall pay their rent in corn, and when they feed it, in money, is a good cuſtome. *Calthrop. f.* 25. To pay Rent.

All cuſtomes, eſpecially ſuch as are in derogation of the Common Law are taken ſtrictly, but not literally. And therefore where a cuſtome is that a man may grant in Fee; by this he may grant in How they ſhall bee taken. To make eſtates.

in taile or for life. So where the cuſtome is, that the Lord may grant for life; by this he may grant during widowhood. He who may doe which is more, may do which is leſſe, not Convertible. But where the cuſtome is, that the wife of the firſt taker ſhall have her widowes eſtate, by this the wife of the ſecond ſhall not have it. *Coke* 4.30. *of Copyhold.*70.77.

Cui licet quod majus, non debet quod minus eſt non licere; ſed non è converſo.

If the cuſtome be that the Copyhold Land may be Leaſed by the Lord ſurveyor or deputy ſurveyor; the Lord cannot by his Teſtament appoint & authorize one to keep Courts and make eſtates. *Co.*4.30. *of Copyhold* 35.

To pay money.

If there be a cuſtome that for every houſe in the Mannor two ſhillings Fine ſhall be paid: if the Tenant maketh one houſe into two houſes, or maketh a new houſe, no Fine ſhall bee paid for theſe new houſes. So if I have eſtovers appendant to my houſe, and I build a new houſe, I ſhall not have eſtovers to this new houſe. But if I onely change the rooms, my eſtovers do continue. So it is of a water courſe to a Fulling-mill, converted to a Corn-mill, or of a light in a Hall, converted to a Parler. *Co.* 4.32. *of Litt. Sect.*74.

Common.

The

The proofe of theſe cuſtomes, and due Preſident, as to prove Leaſes, may be made for longer time then a yeare: to ſhew one Leaſe, is no proofe of a cuſtome. Proof of it.

In cuſtome there is *Vſer*. Firſt, when according to time and occaſion it is uſed. Secondly, *Non-uſer*, i. when for want of time and occaſion through negligence or forgetfulneſſe it is not uſed: this will not hurt the cuſtome. And therefore if there be a cuſtome that the Tenants ſhall doe work for the Lord yearely, and it hath not been done for divers yeares, yet the cuſtome remaineth, if any man living can remember it hath been done. And ſo it is if one have a market one day a weeke, and do not keep it. Thirdly, if the Tenant uſe to pay the Lord when they ſow their Land rent corn, and when they feed it, money, or to pay the Lord every fourth yeare a double rent, and every ſixth yeare a half rent: this is a good *Interuſer*. Fourthly, Abuſer is where the Tenant doth put in other cattle or more cattle in the Lords ſoile then he ought, this doth not deſtroy the cuſtome, but this is Fineable at the Lords Court. And Loſt. For payment of rent.

ſo

ſo it is if the Lord have a Faire or Market one day of the week, and he keep it another day; this is not a forfeiture of the cuſtome. And yet if he have it two dayes, and keep it three dayes, this is held to be a forfeiture. *Calth. f.* 43. 44, 45. See more to this in the next queſtion.

Chap. 20.

When and how a Copyhold ſhall be ſaid to be deſtroyed or ſuſpended.

For the clearing of this point, theſe things are to bee known. 1ᵗ. The Copyhold is deſtroyed and gone in all theſe following caſes. 1. When the Copyhold is either by Act of Law, or Act of the Lord or the Copyholder, or Tenant become not demiſable by Copy. As for example, if the Lord by Fine or Feoffment, or otherwiſe by Deed grant the reverſion of one or ſome of the Copyhold Tenements, of the Mannor in Fee, or for Leaſe to me, by this it is gone. And in this caſe alſo it is ſo gone, that no acceptance of Rent or admittance of the Tenant after will revive it. But if the Lord grant the reverſion of all his Copy-

hold

hold Tenements; by this the Mannor is not deſtroyed *Co.*4.27.*of Copyhold* 176. Or if when the Copyhold is come into the Lords hands, he do by Fine, Feoffment or Recovery paſſe away the Fee, or make a Leaſe for life or yeares of the Land, or ſuffer it to be extended on a Statute or Elegit of his own acknowledgment, or if after it come into the Lords hands he die, and it be after aſſigned to his wife in dower; by this in theſe caſes the cuſtome is deſtroyed for this Land. *Co.*2.17.*Calth.*91.

Or if the Lord or his Leſſee of the Mannor doth make a Leaſe of the Copyhold to the Copyholder, or make a Feoffment abſolute or conditionall to the Copyholder of the Copyhold, the which he doth accept. Or the Lord make a Leaſe of the Mannor to the Tenant for life, the Remainder to a ſtranger; by either of theſe alſo, it is gone. *Dyer.*114. *Kytch.*82. Or (as ſome ſay) if the Copyhold come into the Lords hand by eſcheat, or the Lord purchaſe the Copyhold; but this opinion is diſallowed. *Calthrop.* 90. 88. 91. But if the Lord grant part of the Copyholds onely, by this it is cleare the Mannor is gone, and

cuſtome deſtroyed. Adjudge 29 *Eliz. Calth.* 99. And where the Copyhold is extinguiſhed, the Land can never bee afterward grated by Copy.

If there bee a Leaſe for yeares of the Mannor, and one of the Copyholders doth purchaſe the Reverſion in Fee; by this the Copyhold is deſtroyed, and the Leſſee of the Mannor ſhall out the Copyholder, and have the Land for the time. *Calth. f.* 97.

And yet if the Copyholder accept a Leaſe for yeares of the Mannor, or marry with the wife of the Lord, by this the Copyhold is not extinct, but it is ſuſpended. And if a Copyhold be in hand, and the Lord alien by Fine or Feoffment, or make a Leaſe of the Mannor for yeares, by this it is extinct.

And if a Copyhold bee granted to three for their lives, and the firſt of them take an eſtate by Deed, with livery of ſeiſin from the Lord; by this the Copyhold for that life is at leaſt ſuſpended. *Dyer.* 30. *Co.* 4. 31. But the Copyhold is neither extinct nor ſuſpended in theſe following caſes, (*viz.*) where the Copyhold is ſurrendred, forfeit, or doth eſcheat into the Lords hands, and the Lord

Lord doth keep it in his own hands, or let it at will onely; or the Tenant having Licenſe from the Lord, make a Leaſe to a ſtranger according to his Licenſe: or without Licenſe make a Leaſe to the Lord. *Co.* 4. 30. So where the impediment is tortious, as if the Lord be diſſeiſed, and the diſſeiſor die ſeiſed; or the land bee recovered by falſe verdict, or erroneous judgement, and afterwards is recontinued. What is done againſt law is reputed not done. The impediment which takes not its effect from the law is invalid. *Co.* 4. 31. *of Copyhold* 178.

Quod contra legem fit pro infecto habetur. Non valet impedimentum quod de jure non ſortitur effectum.

But in all the caſes before where the Copyhold is gone, by grant of the reverſion it is not ſo gone, but that the Tenant ſhall hold his eſtate ſtill, and ſubject to forfeiture as before, as hee muſt ſtill perform the ſame ſervices (Suit of Court excepted) as before, and the cuſtomes incident to the Land, and if it bee Burrow Engliſh or Gavelkind, continue ſtill. But Fine upon Alienation, and Admittance is gone, and the Tenant cannot now ſurrender or paſſe his eſtate by any way but by a Decree in Chancery: And this will bind the perſon onely. *Co.* 4. 25. *of Copyhold* 176.

Chap. 21.

What Acts amount to the Forfeiture of a Copyhold eſtate, and how.

OF Acts which amount to a forfeiture, ſome are forfeitures in the act, and in the inſtant that they are done, ſuch are offences apparent and notorious, of which the Lord by common preſumption cannot but have notice: Some are no forfeitures, till a Preſentment be made thereof. Other Acts there are which are offences, but are not ſuch as cauſe a forfeiture, yet are they Finable to the Lord.

Of the firſt ſort are theſe following Acts.

1 By not coming in to take his Land.

If by ſpeciall cuſtome upon the deſcent of any Copyhold of Inheritance the heire be bound upon three ſolemne Proclamations, at three ſeverall Courts, to come in and be admitted into his Copyhold, and he cometh not, this is a forfeiture if he doe not come; this is in the Act, a forfeiture. *Calthrop. f. 69. Co. of Copyhold* 164. and yet if a Copyholder enter before admittance, this is no forfeiture

Admiſſion

feiture without a ſpeciall cuſtome for it.

So if a Copyholder being ſufficiently warned to appear at the Court Baron of the Mannor, and he wilfully make default, having no excuſe for his abſence. And this offence is greater if he do wilfully refuſe to come; or being come to be ſworn of the Homage, or being ſworn to Preſent; or if he depart without Preſentment: as if thirteen be ſworn, and twelve Preſent, and one refuſe. But if a Copyholder be hindred by ſicknes, waters, debts or the like, his default is no forfeiture, but otherwiſe it is in the act a forfeiture. And yet ſome ſay this muſt firſt be Preſented ere the Lord can take advantage of the forfeiture, *Dyer.* 211. 31. *Calth. f.* 67. *Dyer.* 233. 9 *H.* 6. 44. So if he ſwear in Court, he is none of the Lords Copyholders, or being required to be ſworn of the Homage, refuſe it for that cauſe; this it ſeems is a forfeiture, and that without Preſentment. 2. By denying of Suit of Court.

So if the Steward ſhew a Roll whereby the Tenant is proved a Copyholder, and the Tenant ſay he is a Freeholder, and ſhew a Deed to that purpoſe, and tear in pieces the Court Roll; this is ſuch a forfeiture. And yet if there be a

doubt in it, and the Copyholder do his ſervice with a Proteſtation, that it may be recorded as it ſhall fall out: this is no forfeiture, nor Finable. So if hee ſpeak unreverent words of the Lord in the Court, as if he ſay that he doth exact and extort unreaſonable Fines, and undue ſervices; this is onely Finable: So if he ſay that he will deviſe a means to be no longer his Tenant; this is neither a forfeiture, nor Finable.

3 By non-payment of the Fine

Where the Fine upon Admittance is certain, if after admittance it bee upon demand denied, or not paid. Or where the Fine is uncertain, and the Lord hath ſet it reaſonable, and the Tenant doth not pay it in a reaſonable time after demand; in theſe caſes it ſeems there is a forfeiture. But it is no forfeiture in him to deny the payment if it bee ſet unreaſonable. And of this point the Judges and not the Jury ſhal be Judge. And yet of this alſo ſome hold there muſt bee a Preſentment before there can bee a forfeiture. *Co.* 4. 27, 28. *Calth. f.* 67. *Trin.* 47 *ac. B. R.*

4 By bringing a Replevin.

If the Copyholder ſue a Replevin againſt the Lord diſtrayning for his Rent or ſervice; this is ſuch a forfeiture. *Co.*

of

of Copyhold 165. So if the Lord bring Treſpaſſe againſt the Tenant, and hee plead it his Freehold. And yet if the Copyholder doubting of the truth of it whether it be due or not, intreateth of the Lord that the Jury may inquire thereof; this is no forfeiture. 5 By pleading.

If a Copyholder for life ſuffer a recovery by plaint in the Lords Court, as Copyholder of Inheritance; this is ſaid to be ſuch a forfeiture. And yet if ſuch a Copyholder ſurrender in Fee; this is no forfeiture. So if Copyholders in Fee make Partition; this is no forfeiture. *Calthrop.* 98. 6 By ſuffering a Recovery.

If the Lord demand his Rent of the Copyholder, and he deny to pay it, or he delay to pay it without the Lords agreement: Or if the Lord come upon the Land, and there continue demanding of the Rent, and it is not paid; this is ſuch a forfeiture: For the Copyholder knowing the time of payment, is to provide it againſt that time. And this alſo by ſpeciall cuſtome may be a forfeiture before the admittance of the Tenant. *Co. of Copyhold* 167. *M.* 7 *Jac. B. R.* 7 By not paying Rent.

Waſte in a Copyholder is either voluntary, or permiſſive. If a Copyholder 8 By doing waſte.

commit voluntary waſte, as if he pluck down any ancient built houſe, or build a new houſe, and then pull it down again: or plow up meadow ground, ſo that the ground is thereby made worſe: or cut more timber then there is need of: or being cut doth miſimploy it: or doth not imploy it in due time: or lop the trees and ſell the loppings: or cut down any fruit trees for fuell, having other wood ſufficient: or behead trees, or break the boughs, ſo as the bodies doe thereby putrefie: all theſe things are forfeitures. And yet the cutting and carying away of ſhrowdes or underwood is no forfeiture, without a ſpeciall cuſtome to make it ſo.

So if the Tenant have a grant of the trees, or a Licenſe to cut down trees; in this caſe it is no forfeiture: but otherwiſe in theſe and ſuch like caſes without a ſpeciall cuſtome (which ruleth much herein) to enable the Act, it is a forfeiture. 9 *H.* 4. 12. *Calth. f.* 68. *A.* 36, 37. *Eliz. Co. B. Co.* 4. 27. *of Copyhold* 168. *Calth.* 98. *Co.* 1. 63. And theſe things will be a forfeiture when they be done by the Leſſee at will of a Copyholder, and the Copyholder ſhall have his remedy

medy over againſt the Tenant at will by Action of the caſe. So alſo it is for permiſſive waſte : as if the Copyholder ſuffer his houſe to decay : or fall for want of repair, or ſuffer his Meadowes or Lands by his ill husbandry to be ſpoyled. And yet ſome are of another opinion in ſome of theſe caſes, for they hold that many of theſe are no forfeitures till there bee a Preſentment of them. And herein they diſtinguiſh betweene voluntary and involuntary Acts, and Acts that lie in non-feaſance, which they ſay muſt be Preſented, and Acts that lie in misfeaſance, which needs no Preſentment. *Calth. f.* 68.

Of the next ſort whereof the Lord muſt have a Preſentment before he can take advantage of the forfeiture, are theſe things following (viz.) where the Copyholder doth commit Treaſon or Felony, and bee thereof attaint. Or be convict for Recuſancy, or be outlawed, or be excommunicate, or goeth about in any other Court to intitle the Lord to the Copyhold. Or if he Alien his Copyhold Land by Fine, Deed, or make a Leaſe of it without Licence of the Lord: And yet this Leaſe as to all others but the

6 By committing of Treaſon, Felony, &c.

10 By making a Leaſe, &c. Licenſe.

the Lord himſelf is good. But in caſe where the cuſtome will warrant a Leaſe for a yeare; there it is no forfeiture, whether it bee by word or writing: for without a cuſtome of enablement, it is held that a Copyholder by the Common Law cannot make a Leaſe for a yeare, 35 *Eliz. ch.* 2. *Trin.* 3. *Jac. Curia. Co.* 4. 27. *Litt. Sect.* 74. If the Copyholder having a Licenſe to let for ten yeares, and he let for twenty yeares; this is a forfeiture. Yet if the Copyholder for life ſurrender to the Lord to the uſe of another in Fee, or make a Feoffment in Fee or Leaſe for life, but doth not make Livery of Seiſin upon it, or not make a good Livery upon it, or doth bargain and ſell the Land without Inrollment of the Deed; neither of theſe is a forfeiture. *Trin.* 36 *Eliz.* 2. *Co. B. Co.* 4. 23. 1. *part. f.* 495. *of Copyhold* 169.

So if the Copyholder have Copyhold Lands and other Lands in Dale, and hee bargain and ſell all his Lands in Dale, and the Deed is inrolled; by this the Free land onely paſſeth, *ergo*, this is no forfeiture: But if he have no Free land, there it is a forfeiture: And all theſe offences

offences are the greater when they are willingly done.

Of the third ſort of offences are theſe following, (viz.) Where they Copyholder being of the Grand Jury, doth indict the Lord, or give evidence againſt him: or being a Bayliffe if he arreſt him or ſue him at Law (except it be in the caſe of a Replevin before) neither of theſe Acts is a forfeiture, nor is it Fineable. So neither if the Copyholder diſſeiſe the Lord of any other Land. *Calthrop. f.* 68. 91.

So if the Copyholder abuſe the Lord in words, or abuſe the Lords Common with his Cattle, or raile upon another Copyholder in the Court, or uſe any ſuch like words or deeds of contempt, that do not tend to the Lords diſinheritance; theſe things are at the moſt but Fineable. *Calthrop. f.* 45.

CHAP.

CHAP. 22.

Who may Forfeit: And how.

IN anſwer to this queſtion theſe things are to be known:

Non compos mentis. 1. A Copyholder of unſound memory, an Ideot, or a Lunatick, cannot forfeit his eſtate.

Infant. 2. An Infant under fourteen yeares of age cannot forfeit, for he is till then to be in Ward to the next of kinne, or Bayliffe, according to the cuſtome of the place. Nor can he forfeit by any negligent or ignorant offence, as non-claim, not coming to be admitted, not repairing, nor maleſeſans: Thus if hee bring a Replevin againſt the Lord, alien by Deed, or the like Acts: But by a voluntary waſte, or obſtinate denyall of Rent an Infant may commit a forfeiture. And ſo he may by doing a Felony. *Co. of Copyholds* 172.

Feme covert. 3. A feme covert cannot by Act ſhe can doe alone, forfeit her eſtate; but her husband, or ſhe with the conſent of her husband may. Yet if a ſtranger with the wives conſent without the conſent of her

her husband commit a waſte; this is not a forfeiture. *Co.* 4. 27. *of Copyhold* 172, 173.

4. The Gardian of a Copyholder, may forfeit his Wardſhip, but he connot forfeit the Copyhold. *Co. of Copyhold* 172, 173. Gardian.

5. *Cey que uſe* of a Copyhold connot forfeit it. *Cey que uſe*

6. A diſſeiſor of a Copyhold cannot forfeit it. Diſſeiſor.

7. He that doth forfeit, can forfeit but his own part; and therefore if there be two Jointenants, and one of them commit a forfeiture; Leaſe for life, the remainder for life, or in Fee, and the firſt Tenant for life commit a forfeiture or purchaſe the Mannor, and extinguiſh the Copyhold, the remainder is not hurt.

If the husband and wife be joynt Copyholders of the purchaſe of the huſband during coverture, and he is attainted of Felony, and dieth; his wife ſhall have all the land. But if the purchaſe were before the marriage, then a Moyity is gone. *Calthrop. f.* 92. 97. So where the eſtate is made to three ſucceſſively, and one of them doth commit a forfeiture;

ture; this cannot hurt the estate of the other 2. So where a Copyholder in Fee by license doth make a Lease for yeares by Deed, or without license by Copy, and either of these Lessees commit waste; by this the reversion is not forfeit. *Co. of Copyhold* 172.

8. If a Copyhold be surrendred to the use of *J. S.* he cannot forfeit this before admittance.

9. If one have severall Copies, the forfeiture of one of them is not the forfeit of the other. *Co. of Copyhold* 174.

Chap. 23.

Who shall take advantage of a Forfeiture.

Regularly, none may take advantage of a Forfeiture but he that is Lord of the Mannor at the time of the Forfeiture. And therefore if the Copyholder make a Feoffment, and then the Lord doth alien the Mannor; in this case neither the granter nor the grantee can take advantage of the Forfeiture. And yet if there be Tenant for life of the Mannor, the remainder in Fee, and a Copyholder commit

commit a Forfeiture, and the Tenant for life of the Mannor die before his entry; in this caſe hee in remainder may enter. And he that was never Lord of the Mannor, ſhall take advantage of the Forfeiture: as where the Lord make a Feoffment of a Copyhold in Fee: in this caſe the Feoffee ſhall enter for the Forfeiture. *Co.* 4. 24. *of Copyhold* 176.

Chap. 24.

What Act will be a confirmation of an eſtate forfeit.

IN caſe where a Copyhold is forfeit and the Lord have notice of it, if hee ſhall doe any thing afterward whereby hee ſhall acknowledge the Copyholder to be his Tenant: as diſtrain upon the land for Rent, admit him to be Tenant, or the like: by this the Lord is concluded to take advantage of the forfeiture. And yet if the Act done by the Copyholder be ſuch an Act as doth deſtroy the Copyhold: as if hee make a Feoffment of the Copyhold or the like: In this caſe no ſubſequent Act of the Lord will help. *Co. of Copyhold* 176.

Chap.

Chap. 25.

In what Statutes Copyholds and Copyholders, are included.

THey are expreſſed in theſe following Statutes. *R.*3.4.A Copyholder that hath 26ˢ. 6ᵈ. the year, may bee a Jurer as well as he that hath 20ˢ. the year, of Freehold land. 1 *Ed.*6.14. about Abby land. 2 *Ed.*6.8. about Offices found. 1 *M.* 12. now expired touching the aſſiſtance of Juſtices of Peace to ſuppreſſe a Riot. 5 *Eliz.*14. about Forgerie to defraud a Copyholder. 13 *Eliz.* 7. about the Copyhold of a Bankrupt. 14 *Eliz.* 6. about his Copyhold that doth depart the Kingdome without leave, 35 *Eliz.* 2. about a Recuſant. When a Statute doth alter the Service, Tenure, Intereſt of the Land or other thing in prejudice of the Lord, Cuſtome, or Mannor, or of the Tenant there, the generall words of Tenant, or the like extend not to Copyholders: But when the Act is for the good of the Commonwealth, and no prejudice may accrew by reaſon of any alteration of the

the intereſt, ſervice or cuſtome of the Mannor, there uſually Copyholders and Copyholds are included. *Co.* 3. 8. For this cauſe it is judged that they are not intended in theſe following Statutes, (*viz.*) *Weſtm.*2. 1. of entailes. And yet by cuſtome ſuch lands may be entailed. Cuſtome. *Weſtm.*2.26. Of an *Elegit*. 16*R.*2.5. Of forfeiture of Lands by receiving Bulls, &c. 2 *H.* 5.7. Of the forfeiture of Hereticks 27 *H.* 8.10. Of Uſes. 31 *H.* 8. 1. 32 *H.*8.32. About Partition. 32 *H.*8.28. Of Leaſes made by Tenant in taile, or husband and wife. 17 *Ed.*2.18. Of Ideots Lands. *Merton* 1. Of Damages *Co.* 4.30. *Weſtm.*2.3.31 *H.*8.13. and that of 32 *H.*8.9. Of Champerty. *Co.* 4.26. 4 *H.*7.24. Of Fines. *Co.*9.105.

Chap. 26.

How a Copyholder may ſue and be ſued.

For the better underſtanding hereof, theſe things are to be known: 1. For any thing which doth concern his Copyhold, he cannot ſue or be ſued in any reall Action, or Action ſavouring of the

reality elſewhere, but in the Lords Court: So that if a ſtranger out him, he muſt ſue by plaint in the Lord Court as his caſe is. And there the Entries are thus, *A.* of *B.* plaineth againſt *C.* of *D.* of a plea of land, viz. of one meſuage, 40 acres of land, 4 acres of meadow, &c. with the appurtenances. And maketh proteſtation in nature of the writ of our Lord the King of Aſſiſe of mort d'anceſtor, at the Common law, or of the writ of our Lord the King of Aſſiſe of novel diſſeiſin at the Common law, &c.

Pledges of proſecuting &c.
Littlet. Sect. 76.

But he may bring an Action perſonall in any other Court. And the Leſſee of a Copyholder may bring an *Ejectione firme* in any other Court. *Co. of Copyh.* 147.

Ejectione firme.

2. If the Lord out him he may have an *Ejectione firme*, or Treſpaſſe againſt the Lord in any Court; but hee cannot have an Aſſiſe againſt the Lord. *Co. of Copyhold.* 146.

3. A Copyholder of baſe Tenure in ancient Demeſne cannot have a Writ of *Droit cloſe* or *Monſtraverunt*, but Tenants of Franktenure in ancient Demeſne

meſne may. *Co. of Copyhold fol.* 146.

4. If the Copyholder by licenſe of the Lord make a Leaſe of the Land, and the Leſſee cut down timber, there being a cuſtome that the Copyholder may cut down timber: the Copyholder in this caſe, muſt puniſh this in the Lords Court.

5. If a wife dowable by cuſtome recover her dower by plaint in the Lords Court, and in the Action ſhe recover damages alſo; ſhe may not ſue for theſe damages at Common Law. *Co. of Copyhold* 146.

6. If a Copyholder make a Leaſe by Copy for yeares, or by Deed with Licenſe rendring Rent, an Action of debt for this Rent may be brought in any other Court. *Co. of Copyhold* 146.

7. If a ſtranger cut down the Trees growing on the Copyhold, an Action of Treſpaſſe lieth againſt him for this at Common Law. So if the Trees by cuſtome do belong to the Tenant, and the Lord doth cut them down. *Co. of Copyhold* 147.

8. If the Copyholder ſurrender to the uſe of the creditour in truſt to pay his debts, and then to have the Land a-

gain, and he keep it; in this caſe this being proved by examination of witneſſes upon an Engliſh Bill, the Lord may reſeiſe and reſtore the Land. *Calthrop. f.* 74.

9. If the Lord have a great waſte, and he grant a Rent out of it; the Grantee may diſtrain the Tenants, unleſſe they can preſcribe to have Common there. *Calth. f.* 97.

10. If the Steward, Bayliffe, or Tenants, into whoſe hands the ſurrender is made, refuſe to Preſent or Admit the Tenant; in this caſe he is to ſue by Bill or Petition to the Lord in his Court. And if the Lord will not there doe him right, the Tenant may ſue him and them in Chancery, and there he ſhall have reliefe. *Co. of Copyhold.* 180.

11. For the order of Proces in Suits in the Lords Court, inquire the Cuſtome of the place. And ſee *Calthrop. fol.* 75. 98.

CHAP.

Chap. 27.

Of a Licenſe to Alien.

FOr this theſe things are to be known:
1. That the Lord may Licenſe his Tenant to let by Deed for years if there be a cuſtom for it. And the entry of this in the Court Rols is thus. At this Court *I. S.* prayeth licenſe of the Lord to demiſe, &c. To whom the Lord gives licenſe &c. And if it be by the Steward. Whom the Lord by the Steward hath licenſed. *Co. of Copyhold* 123. 125.

2. This Licenſe (it ſeemeth) is not grantable by the Steward without a ſpeciall cuſtome to enable him to doe it, or a ſpeciall warrant from the Lord to give him power ſo to doe. *Co. of Copyhold f.* 124. Cuſtome.

3. If a Tenant for life of a Mannor grant a Licenſe to a Copyholder to Alien, and the Lord die; in this caſe the Licenſe is good. *Co. of Copyhold* 85.

Chap. 28.

Of a Tenure.

A Tenure is the manner whereby Lands are holden of their Lords. This seemeth to differ little from Service, for there can bee no Tenure without some Service; but that Services seem to be the effect of a Tenure. Touching so much of which as shall serve to our purpose these things are to be known:

1. A Tenure is said to be either Perfect, which is between the very Lord, and very Tenant, or Imperfect, which is between the Doner and Donee, or Lesser and Lessee. A Tenure also is said to be Spirituall, and so it is either incertain, as Frankalmoigne, or certain, as Divine Service. Or it is Temporall: And so it is more honourable, or for a time of warre. Such is all kinde of Service in Chivalry, as Escuage, Cornage, Grand-Serjeanty, Knights Service in Capite, Knights Service or Chivalry, and Castle Gard.

Or more base, and for a time of Peace; such is all Socage Tenure, as Petit Serjanty,

janty, Burgage and Socage in Capite. But to hold in Fee farm is no Tenure at all. *Littletons Tenures throughout.*

2. Lands and Tenements doe lie in Tenure, and ſo (it ſeemes) doth an Advowſon in groſſe, and of theſe a Tenure may be laid to be; but not of a Rent. Seigniory common or the like, except it be in caſe of the King. *Broo. Tenure.*

3. Any man may extinct a Tenure, but no man but the King can create a perfect Tenure, or alter a Tenure to bring it to another, but in ſome ſpeciall caſes. *Co. of Copyhold f.* 55. *Dyer* 84. And therefore if a Tenant in Fee-ſimple enfeoffe another in Fee, neither by the expreſſe reſervation of the Feoffer, nor implied reſervation of Law can a perfect Tenure be made, the Feoffee ſhall hold not of the Feoffer, but of the Lord Paramount.

Wee ſhall ſpeak but of two kinds of Tenures, Knights Service or Chivalry, and Socage. And firſt of Knights ſervice.

Chap. 29.

Of Knights Service.

THis is such a Tenure, as whereby the Tenant is bound to goe with his Lord in the warres, or keep a Castle, or the like. Touching which, this onely for our purpose is to be known.

1. This may be of the King, as when one doth hold of him as of his Mannor Dale, or the like.

2. To this doth belong Aid, Homage, Fealty, Ward, Marriage and Relief; but it doth not draw any other Land with it, neither need the Tenant to sue Livery for this Land. *Co.* 1. *part f.* 75. 56.

Chap. 30.

Of Socage.

IT is a Tenure whereby the Tenant doth hold of his Lord to pay him some Rent, or to doe him some Husbandry businesse for all manner of Services. Touching so much whereof as is needfull in this place know this.

1. That

1. That it is either free, i. to pay a certaine ſumme of money in lieu of all Services; or it is villeine, i. to plow the Lords ground, carry his dung, or the like.

2. To this doth belong Aid and Relief, but not Wardſhip, Homage, or Marriage. *Co.* 9. 130. *Lill. Cap. Socage.*

Chap. 31.

Of Services.

SErvice is that duty which the Tenant by reaſon of his Fee oweth to his Lord. Touching ſo much whereof as we ſhall uſe here, know theſe things. Services as Tenures do admit of many diviſions, ſome of them are either more noble, as Knights Service and the like, or more baſe and clowniſh, as Socage and the like. Some of them were bond, and ſome free; ſome of them were real, as Wardſhips, Marriages, or the like. And ſome of them are Perſonall or Corporall, (i,) to be done by mens perſons or bodies: and theſe again are either of Submiſſion, or of Profit. Of Submiſſion, as Homage and Fealty. Of Profit, and this either

either to the publick profit of the Commonwealth, or private profit of the Lord. To the publick either for defence of the Realm; as first, all Kind of Knights Service. Secondly, to repair wayes and bridges. Thirdly, for works of Piety to maintain a Preacher, repair Churches, or the like. Fourthly, for works of Charity, as to marry poore women, or such like. Fifthly, for works of Justice, as to aid the Sheriffe, or the like.

To the private profit of the Lord, as Rent, suit of Court, to be Butler, Baker, or Carver to the Lord.

Some Services are annuall, to be paid or performed every yeare, as Rent, suit of Court, and the like.

And some are accidentall to bee paid or done now and then, or one time as it falls out, as Heriot, Fealty and Homage.

These some of them lie in Render, as to pay Rent: some lie in Prender, as that the Lord shall take foure load of wood out of his Tenants grounds. And some of them again lie in User, as that the Lord shall have Common for his Cattle in the Tenants grounds.

They are also divided again into in-

tire

tire Services, as a horſe, a ſpur, or the like.

And into dividable Services, as mony, and the like: And into certain, and incertain, and into Services of fidelity, and no profit, or profit and no fidelity. *Co.* 6. 10. 108. *Litt.* 122.

If the Tenant or Freeholder refuſe to doe corporall Services, as Homage, Fealty, amend high ways, bridges, or the like, doe the office of a Butler, Carver, Baker, or the like, pale the Lords Park, tyle his Houſes, thatch his Barn, or the like, being bound by his Tenure: the Lord may diſtrain the goods or Cattle of his Tenant, and keep them till ſatisfaction. *Co. of Copyhold f.* 49.

So if a Freeholder refuſe to pay his annuall Rent or Service according to his Tenure, the Lord may diſtrain and avow the taking up of a Replevin. But ſo long as the rent doth continue of any eſtate of Franktenant, no Action of debt lieth for the arrearages, no more then for a corporall Service. But after ſeiſin he may have an aſſiſe for the rent. But after the eſtate is determined, an Action of debt will lie for the arrears of the rent. *Co. of Copyhold f.* 50. But of this ſee more at large, *chap.* 42.

But

But accidentall Services are gotten either by ſeiſure, as a Wardſhip of the heires body, waiſes, eſtrayes, wrecks, deodands, and ſuch like forfeitures; or by entry, as the Wardſhip of the heires Land. So upon Land forfeit to the Lord upon the breach of ſome condition, or upon an Alienation in Mortmain, or by ſeiſure or diſtreſſe, as Heriots, Service or cuſtome, or by Entry, or Action, as Lands forfeit to the Lord by the ceſſer of the Tenant, or eſcheat upon the Attainder of the Tenant, or his death without heire; in the one caſe he hath a writ *Ceſſavit*, in the other a writ of Eſcheate. Or by diſtreſſe or action, as reliefes and amercements; for relieſe which is no Service, but the fruit or impriſonment of a Service, the Lord may bring an action of debt or diſtrain: And for amercements, the Lord may either diſtrain, or bring an action of debt. Other remedies there are againſt ſtrangers that detain theſe Services from the Lord. *Co. of Copyhold f.* 50, 51, 52.

CHAP.

Chap. 32.

Of Homage and Fealty.

SErvices of Submiſſion are Homage, and Fealty, which are certain Ceremonies uſed amogſt Tenants, whereby they ſubmit themſelves to their Lords, or binde themſelves by ſolemne Oath or faithfull promiſe, from that day forwards to become the Lords men for life, member, terrene honour, or at leaſt to owe him faith for the Lands they hold of him. Touching which theſe things are to be known:

1. Thus farre theſe agree, that they are both taken when the Tenant firſt entereth into his Land.

2. They tend to one end to enforce the Tenant to ſubmit to the Lord. But they differ in many things. Firſt, in doing fealty, the Tenant taketh a ſolemne oath; in doing Homage, he onely giveth a faithfull promiſe. Fealty therefore is more ſacred, Homage more humble. For in doing Homage, the Tenant kneeleth; in doing Fealty, hee ſtandeth: in doing Homage, he is uncovered; in doing Fealty,

ty he may be covered; in doing Homage, the Lord kiſſeth his Tenant; in doing Fealty, not; and in doing Homage, hee promiſeth to become the Lords man for life, member, and terrene honour, but in doing Fealty, hee ſweareth onely to become the Lords faithfull Tenant: for Homage concerneth warre, and doth properly appertain to Knights Service; but Fealty chiefly concerneth Service at home, and properly appertaineth to Socage Tenure. Albeit Homage may bee done by Socage Tenant, and that Homage *ex ſe*, maketh Socage Tenure, and not Knights Service: yet it was not ſo from the begining. Secondly, none but the Lord in Perſon can receive Homage, but the Lords Steward or Bayliffe may receive Fealty. And the Lord who hath but an eſtate for life in his Seigniory, cannot receive Homage, but he may receive Fealty. Thirdly, no Copyholder may do Homage, but he may do Fealty: no Tenant for life or yeares, but in Fee-ſimple or taile can doe Homage, but ſuch a Tenant may doe Fealty. Fourthly, Homage can be but once done to the Lord by the ſame Tenant, but Fealty may be often: And therefore if lands deſcend to mee from

from one, and I doe Homage, and after other lands deſcend from another, I ſhall not doe Homage again, but I ſhall doe Fealty. So if a Copyholder ſurrender to the uſe of *I. S.* white Acre, for this hee ſhall doe Fealty, if he ſurrender black Acre to his uſe, he ſhall doe Fealty for this alſo. *Co. of Copyhold Sect.* 19, 20, 21.

Chap. 37.

Of Suit of Court.

Suit of Court is the attendance which a Tenant doth owe to a Court: for which theſe things muſt be known:

1. That this either reall or royall, which is the Service that men owe to the Sheriffs Turn, and Law dayes, which men are bound to by their Oath of Allegiance there taken, and by their reſiance and abode within the compaſſe of the Leet, and not in reſpect of the Tenure of their Land: And therefore if one have land in divers Hundreds, and he be diſtrained where he doth not dwell, he ſhall be diſcharged by a writ; And for default of this Service, hee may be amerced and not diſtrained. Or it is

Co-

Covenant Suit, which is where one hath bound himself by Covenant to doe Suit to anothers Court, for remedy whereof hee must sue the Covenant. Or it is Suit custome, where by the custome of the place, one is bound to do Suit of Court to this or that Court: So are some in the Leet Courts, Barons and Hundred Courts. And this is not to bee done in respect of a mans resiancy or abode, but in respect of his Tenure of that Land within the Mannor, Hundred or County where the Court is: And for this a man must be distrained and not amerced, or he may be forced by a speciall writ.

2. If the Land to which the Service doth belong, doth come into the hands of divers Parceners, the eldest must doe it, and the rest shall be contributory, and she may be compelled thereto by a speciall writ for that purpose. So where there be many Feoffees for Jointenants, one shall doe the Suit, and the rest shall bee forced to contribute. *Br. Suit* 17. *F.N.B.*58.

Chap. 34.

Of a Gardian, Gard, and Wardſhip.

A Gardian is one that hath the cuſtody of an Infant being under age, or of that which is his, or of both. The Ward is the Infant, the cuſtody of an Heire is called the Wardſhip: And ſo a Gardian is either by Common Law, or by cuſtome. By Common Law as a Gardian in Chivalry, Gardian in Nature, in Socage, or becauſe of nurture. The Gardian and Wardſhip in Chivalry is the Wardſhip of ſuch an Infant, whoſe Anceſtor held his hand by Tenure in Capite, or Knights Service: And by reaſon thereof, his Heire, be it male or female, and the land muſt be in the cuſtody and under the protection of the Lord during the Minority. And touching this, theſe things are to be known:

1 The Lord of whom the land is held by the Tenure ſhall have this Wardſhip as a chattell to his own uſe to be ſold or diſpoſed, and to go to his Executors as other chattels.

2 He ſhall have the Wardſhip of the

Heire male till one and twenty yeares old, of the female till sixteen, if she be unmarried at her Ancestours death, but if she be married, or above 14. at her Ancestors death she is not to be in ward.

3 This Tenure draweth to it with the land the profit of the Heires marriage, which the Lord will have. *Co. 1. part. Inst.* 76. 88. This Gardian is to take all the profit of the land without waste making, and to keep his goods and cattles safe to the Heires use: he is to give him fit education, and to protect him from hurt, marry him without disparagement, and when he is of age, let him have his land again. Unlesse it be where the Heire marry himselfe, or will not be married by his Lord, in which care hee may keep the land till he be satisfied for the value or forfeiture of his marriage. *Litt. in toto.*

4 If a Child living his Father or Mother happen to be in such a case; his Father or Mother, and no other, shall have the Wardship of his body; And then he is called a Gardian in Nature. *Broo. Gardian* 110. *Plow.* 304. *F. N. B. fol.* 90. 143. *Co. of Copyhold.* 4. 26, 27.

The Gardian and Wardship in Socage

cage is the Wardſhip of ſuch an Infant, whoſe Anceſtor died ſeiſed of land held by Socage Tenure, or in the nature of Socage Tenure, as Petit Serjanty, Copy of Court Roll, or the like: And touching this, theſe things are to be known:

1 The next of kin to whom the heritage by the Heires death will not deſcend, and that will not have benefit by his death, ſhall have this Wardſhip.

2 He ſhall hold the Land, and take the profits to the uſe of the Heire onely and not to his own uſe, onely hee ſhall have reaſonable allowance for education and expences.

3 This wardſhip ſhall continue no longer, but till the Heire bee fourteene yeares of age, and then the Heire may call the Gardian to account for the profits of the Land. And if the Gardian marry his Heire before he be fourteen yeares old, he muſt account to him not onely for the profits of the Land, but alſo for the marriage, and ſhall pay to the Heire ſo much money as was offered him, or he might have had in marriage.

4 This Wardſhip is annexed to the perſon of the Gardian, therefore hee

cannot grant to another ; and if hee die before the Heire bee of fourteene yeares old, the Executor or Administrator shall not have it, but it must goe to the next of kin : And if a wife have it, it will not be the husbands by marriage as a chattel will be. And therefore in all these respects it doth differ from the Wardship in Knights Service.

5. The Gardians duty is not to do waste, but to preserve the Inheritance and the writings, and to give the Heire fitting education, and at last to marry him with care, and to the Heirs advantage, and not to give or sell the marriage. *Litt. cap. 4. in tota*, and *Co. upon it. Co. of Copyhold f. 26, 27.*

If a man die seised of a Rent Charge, Common or the like, and his Heire is within age of fourteene yeares, here he may chuse his Gardian, and if he be so tender as he cannot, and the father have made no disposition by his Will, it is fit for the next of kin or Gardian in Socage if any be. However, whosoever doth receive the profits thereof shall be chargeable to the infant in account. *Co. super Litt. f. 87.*

The Gardian because of Nature who

who alſo is called a Tutor, is either Teſtamentarie (i.) ſuch a one as is made ſo by Will: As when a man dieth with goods or chattells, or lands not held in Knights Service or Socage: or appointed by the Prætor, made by the Ordinary. Touching the firſt, theſe things are to be known.

1. If he give his goods and chattels to the childe, and by his Will further appoint ſome friend to have the government of his childe, perſon and eſtate, untill he come to fourteen yeares old: for then he ſhall be out of Ward for his body, but his goods may be kept longer from him if his fathers will be ſo, *Co. of Copyhold f.* 23. 24.

2. Hee may by his Will commit his Socage land to what friend hee pleaſe, and for what time he pleaſe, but ſo he cannot doe of Knights Service land.

3. If a Copyholder die, his Heire under fourteen yeares old; the Lord muſt appoint his Gardian till he be fourteen years old, and the father cannot by his Will prevent it.

The Tutor or Gardian or appointed by the Prætor is made by the Ordinary; which is where the father in the caſe be-

fore doth give the eſtate to the childe, & appoint no Gardian. Touching which theſe things are to be known:

1 In this caſe the Ordinary may appoint one to be Gardian, till the Infant be of fourteene yeares old.

Invito curator non datur.

2 After fourteen he is not to have any aſſigned, for then the Rule is, **A Gardian ſhall not be forced upon a man.** *Coke of Copyhold fol.* 26, 27.

The Gardian by Cuſtome is Orphans in the City of *London*, and other Cities. Some make a third ſort or Gardian by Statute Law, as *Coke upon Litt. fol.* 38.6.

For the getting of a Wardſhip of the body, it muſt be by ſeiſure of the Lands, by Entry. *Coke of Copyhold, fol.* 51.

If a ſtranger detain the Wards body or Land from the right Lord, he may have a ſpeciall Writ to relieve himſelf againſt him in this Caſe. *Coke of Copyhold fol.* 52.

CHAP.

Chap. 35.

Of Aid.

Aid is a yeelding of help by one to another to whom he oweth it, and whoſe caſe calleth for it; and it is from a Superior to an Inferiour: As when a particular Tenant is ſued, and he in reverſion helpeth to defend the ſuit; or from one equall to another: as when a Parcener is ſued for and loſeth part of the Land, ſhe ſhall have aid of her fellow. Or it is from an inferiour, to a Superiour; So the Subject muſt help the King by Subſidy: So the Tenant is to aid the Lord, touching which theſe things muſt be known:

1 The Tenant by Knights Service, and Tenant by Socage, both are to yeeld it.

2 Reaſonable aid ſhall bee twenty ſhillings for a whole Knights Fee, of him that holdeth by a Knights Fee in Chivalry, and as much for twenty pound Land held in Socage: and ſo for the rate.

3 It is for two ends: To make the

Lords Sonne Knight, and to marry his eldeſt danghter.

4. That to make the ſon Knight, he may have it at his age of fifteen years; that to marry his daughter at her age of ſeven years.

5. If he will not pay it the Lord may diſtrain for it, or recover it by a ſpeciall Writ for that purpoſe.

If the father levy it of his Tenant, and die before his daughter be married, his Executor if he have Aſſets, otherwiſe his Heire ſhall anſwer what he received. *Weſtmin.* 1. 35. *Coke of Copyhold. fol.* 91. 162. *F. N. B.* 82. *Coke* 11. 44.

Chap. 36.

Of Herriots or Harriot.

THis is the beſt Chattell which the Tenant hath at the time of his death, or Alienation, which he is to render to his Lord: This in ſome places is his beſt live beaſt, ſome places his beſt goods: in ſome places the beſt upon the Land: in ſome places his beſt goods where ever it bee. *Coke of Copyhold, fol.* 28.

For

For the opening of this, further know these things :

1. This either by cuſtome, as amongſt Copyholders, when it is due and hath been paid time out of mind, according to the cuſtome of the place, after the death or alienation of the Tenant : Or by Service, when there is no ſuch cuſtome in the place, but it is by ſpeciall reſervation and agreement that the Tenant ſhall hold his Land to pay a Harriot at the time of death or alienation.

2. Harriot Service is ſeldome reſerved on any leſſe eſtate then inheritance, but may be reſerved on a leſſer eſtate : but Harriot cuſtome is uſually paid, on an eſtate for life or yeares.

3. For Harriot cuſtome albeit the Lord cannot ſhew the Originall of it, yet if hee can ſhew how it hath been paid from time to time upon the death and alienation of the Tenants it is good.

4. The Lord hath a property in this, and therefore as ſoon as it happens, the Lord may ſeize it where ever he finde it; and if it be detained, he may have a detinue for it ; if eloyned, an Action of the Caſe ; or he may diſtrain for it if he will.

5. If a woman be to pay a Harriot by cu-

cuſtome, her husbands goods ſhall not be taken without ſpeciall cuſtome. *M.* 8. *Jac. B.R.*

6 One cannot by deviſe prevent the Lord of this duty.

7 If the cuſtome bee that if hee die ſeiſed hee ſhall pay it, and he is ouſted and dieth before entry, yet hee muſt pay it.

8 For Harriot Service, if it be certain, as a beaſt, &c. The Lord may either ſeiſe or diſtrain, but if it bee incertain, the Lord cannot ſeiſe it, but he muſt diſtrain for it.

9 If the Lord chooſe the worſt hee cannot after help it but is concluded, 28 *Henr.*7.13. *Plow.* 96. *Kelw.* 184. 8 *Hen.*7.10. *Doct. & St. f.*76. *March Rep.*23. *Broo. Hariots in toto. Co. upon Litt. fol.*185.16 *Hen.*7.5.

Chap. 37.

Of a Reliefe.

A Reliefe is a certaine ſumme of money or other thing which the heire of a Freeholder being of full age at the time of his Anceſtours death is then to pay

pay the Lord at the entrance of the Heir into his Land. And this is all the Lord is to have of his Tenant when he is of full age. *Termes of the Law.* And it may bee divided into Relief, Cuſtome and Reliefe Service. Touching which theſe things are to be known:

1 This and Harriot agree in ſome things, but in this differ. Firſt, a Harriot lieth in taking, and Reliefe in giveing. Secondly, a Harriot is paid for a Tenant deceaſed, a Reliefe for an Heire come to the Land. Thirdly, Harriots are paid by Copyholders, Reliefs by Freeholders onely. Fourthly, Harriots are ever upon ſome Cuſtome or ſpeciall Reſervation, but Reliefs are incident to the Fee, and due without Cuſtome or Reſervation, *Co. of Copyhold f.* 38.

2 There is a kind of payment like to this by ſpeciall Cuſtome in ſome places, alſo upon the Alienation of the Tenant. *Co. of Copyhold f.* 32. This is paid for Land held in Socage, and for Land held by Knights ſervice, if the King or other Lord have the Wardſhip of an Heire within age at the death of his Anceſtor, he ſhall have no Reliefe at his full age. *Magna Charta, Chap.* 3. And yet if the King

King have the wardſhip of other Lands by his Tenure by the nonage of the Heire: the Heire when he comes to age muſt pay a Reliefe to other Lords, and ſo to the king alſo if hee be to ſue out no Livery. *Co. upon Litt. f.* 71. *Magnæ Ch.* 13. *Bro. Reliefe* 13. And generally where one ſhall bee in Ward, if he bee within age, he ſhall pay a Relief if he be of full age. *Br. Relief.* 12.

3. This is not a like for all Tenures, or in all places, and therefore incertaine: in ſome places it is by Cuſtome a yeares, in ſome places half a yeares profit, and there the Cuſtome is to be obſerved. By Tenure it is more or leſſe, and in ſome Caſes to bee paid at one time, and in ſome Caſes at another time. Regularly in Caſe of Knights Service, if his Heire hee full twenty one yeares old at the death of the Anceſtor. The Relief for a Dukedome two hundred pound, for a Marqueſſe two hundred marks, for an Earledome a hundred pound, for a Barony a hundred marks, for a whole Knights Fee, which anciently was ſo much as was thought ſufficient for a Knights living, a hundred ſhillings. And ſo for the Race. If the Tenure be by grand Ser-

Serjanty, the Reliefe is the value of the Land for one yeare. If the Tenure bee Socage Tenure, or in the nature of Socage Tenure, and the Heire about fourteen yeares old at the death of the Anceſtour, the Reliefe is double the Rent: (i.) If the Rent be ten ſhillings, the Relief is ten ſhillings more, which the Tenant muſt pay preſently: And if he bee to pay five ſhillings at *Eaſter*, or a pair of ſpurs, the Tenant may double which he will, but if he paſſe the day, the Lord may have which he will. But for Corporall ſervices, as days work at Harveſt or the like, more Reliefe is to be paid. *Co. upon Litt. fol.* 69. 83, 84. 91. 162. *Coke* 7. 33. *Kelw.* 136.

4. For this ſervice the Lord may diſtrain, and cannot have an Action of debt as ſome ſay: And his Executours may bring an Action of debt, but cannot diſtrain. Others that the Lord may diſtrain or bring Action of debt. *Co. of Copyhold f.* 51. where it is by Cuſtome the Lord ſhall have the remedy accuſtomed.

CHAP.

Chap. 38.

Of a Fine and Amercement.

THis word Fine is taken in diverſe ſenſes, but to our purpoſe here. It is a ſumme of money impoſed upon a perſon by the Steward in a Leet, for ſome offence or miſdemeanour committed in his preſence: and an Amercement is alſo a penalty aſſeaſed or pecuniary puniſhment for ſome offence done by way of Omiſſion or Commiſſion: As touching which theſe things are to bee known:

1 Theſe agree in ſome things, for they are penalties impoſed for offences, but they differ in theſe things. Firſt, a Fine is commonly for ſome great offence, and is a greater ſumme; an Amercement for a leſſe offence, and a leſſer ſumme. Secondly, a Fine is in a Court of Record onely, and therefore a Court Baron, which is no Court of Record, cannot fine; and therefore this Court can amerce onely: but a Leet may amerce as well as fine. Thirdly, a Fine need not be affered, but an amerce-

ment

ment commonly ſo may be, and muſt be. *Co.* 8.61. *of Copyhold f.* 40.

And for ſo much of this as doth concern our preſent purpoſe, theſe things are to be known :

1 For any meſdemeanour in the face of a Court; as if any one uſe contemptible words to the Steward or Jury: A Juror refuſe to be ſworn, or an Officer of the Court neglect his duty or be corrupt, if it be in a Leet the Judge may fine the offender, but if it be in a Court Baron, he can onely amerce him: And if the offence be out of Court, the Jury muſt preſent it, and then the offender muſt be amerced by the Jury, except it be by Officers of the Court, for then it may be done by the Steward, and needs not to be affered: Neither if it bee a Townſhip or Village that doth offend, the amercement muſt bee put upon the whole.

2 The amercement muſt bee reaſonable, otherwiſe the party grieved may relieve himſelf by a *Moderata Miſericordia. F.N.B.* 75. *Co.* 11.43. *Co.* 8.61. 59. *Co. of Copyhold* 40.41. *&c.*

CHAP.

Chap. 39.

Of a By-Law.

BY Laws are Orders made in a Court Leet, Court Baron, or elſewhere, by common conſent and agreement, for the good of thoſe that make them, to bind them further then the publick Law doth bind. Touching which theſe things as materiall in this place are to bee known:

1. That the inhabitants of a Village, or other ſuch pecular Society, or the major part of them together in their Court Leet, Court Baron, or otherwiſe by a mutuall conſent and agreement of ſuch major part may make any Ordinances and Orders for the better government of the place: As for repairing Churches, Bridges, Highwayes, or otherwiſe for the publick good: And for ſuch like things as theſe by the very Common Law, without any ſpeciall cuſtome, this being made by the major part will not onely bind them who did agree to it, but all others of that ſociety, or within the Leet, if it be made there: And they may hereby

hereby make taxes upon all the inhabitants, appoint publick officers to levie them, and penalties, as by another Law. But for such things as concern the private, well and better government of the place onely; without a speciall custome to warrant it, they cannot make such by Lawes; neither will in this Case the greater part bind the rest without a speciall Custome to warrant it. *Co.* 6.63. 5.63. 11 *H.* 7. 14. 21. 21 *H.* 7. 20. 40. 44. *Ed.* 3. 19 *Bro. Leet* 34. *Prescription* 40.

2. If a Taxe or Amercement be put upon a Village, and the major part agree what every man shall pay, and they refuse, it seems they may appoint one to levie it, and he may distrain for it, and justifie the distresse. *D. & St. f.* 74. Distresse.

3. No by Law in this Case can be made to imprison the refusers, but distresse and Action of debt in this Case is the proper remedy for a penalty imposed, or breach of a by Law. *Co.* 5.64. Imprisonment.

4. Such by Lawes as are against Law and Reason are void.

5. The Lord may by Prescription distrain for the Amercements upon them, and sell the distresse. *Bro. Leet.* 34. *Prescription* 34.

CHAP. 40.

Of a Forfeiture.

A Forfeiture is the effect of tranſgreſſion of ſome Law, or of the committing of ſome offence; by the doing whereof, ſome reall or perſonall thing is forfeit: And this may bee of Land, or of goods or chattels. And of Lands, it may bee either of Copyhold Land, or of Freehold Land; of Copyhold Land wee have ſpoken before in *Chap.* 21, 22, 23. Touching forfeiture of Freehold Lands theſe things are to be known.

Mortmain. 1 If any Freeholder doth alien his Land in Mortmain, hee forfeiteth his Freehold.

Ceſſavit. 2 If a Freeholder doe ceaſe for the ſpace of two yeares to performe his ſervices, or pay his rent he is bound to by his Tenure, and hath not ſufficient goods and Chattels upon his Land, whereby to be diſtrained, he forfeiteth it.

3 If the Freeholder breaketh any condition whereto he is tied, he forfeits his

his Freehold. *Co. of Copyhold f.* 44. Many other wayes may an eſtate of Freehold be forfeit, of which wee ſhall not make mention here And touching the forfeitures of goods theſe things are to be known for this purpoſe.

1 If a Felon ſtealeth goods, and upon purſuit made waiveth them, and leaveth them in any part of the Mannor, and be not attached upon the freſh ſuit of the owner, theſe goods are a waife, and forfeit to the Lord who may ſeiſe it. Waif.

2 If any beaſts be found wandring in any place, and taken up and proclaimed in three market Towns adjoyning, and not claimed by the owner within a year and a day, this is an eſtray and forfeit to the Lord. Eſtray.

3 If any ſuffer ſhipwrack on the Seas, and by the violence of the waves the goods are caſt upon the ſhore, and being ſeiſed by the Bayliffe, are not claimed within a yeare and a day, this is wreck and forfeit to the Lord who may ſeiſe upon it. Wreck.

4 If any come to an untimely death without the fault of any reaſonable Creature, the cauſe of this death as a Deodand, is forfeit to the Lord; as a Deodand.

tree, or cart with horſes falling, or horſe ſtriking, theſe are all of them Deodands. And many other wayes may goods and chattells be forfeit, whereof we cannot ſpeak here. And theſe albeit they be not incident to Mannors, yet muſt Lords of Mannors claim, and may have them by Preſcription or Patent from the King. *Co. of Copyhold f.* 44. 45.

Chap. 41.

Of Eſcheat.

Eſcheat is where a Tenant in Fee-ſimple Land dieth, not having heire generall or ſpeciall to be capable of the Inheritance, in this Caſe the Lord ſhall have it. Touching which, theſe things are to be known.

1. There are two cauſes of this Eſcheat. Firſt, attainder of the bloud by doing of Treaſon or Felony. Secondly, fayler of the bloud by extinguiſhment or Baſtardy.

2. There can be no Eſcheat of entayled Land, but of Feeſimple Land onely.

3. There ſhall be no Eſcheat of things in Action, Uſes, Condition, Rights of Entry

Entry and Action, but of Land onely.

4. If all the Heires be dead, and there is no Heire to be found of the Land, or the Anceſtors bloud is corrupt by Treaſon or Felony done by him; or the Anceſtor be a Baſtard and die without iſſue of his own body, for no other body can be Heire to him, nor can he be Heire to any other; in all theſe Caſes the Lord ſhall have the Land by Eſcheat.

5. If the Baſtard or Tenant be diſſeiſed, and die without Heire, yet the Lord may enter: But if the diſſeiſer die, or alien the land to another with good faith before entry, the Lord cannot enter. But in all other Caſes the Lord may enter for the Land, or maintain an Eſcheat for recovery of the Land. *Co. of Copyhold f.* 48. *upon Litt.* 268. 312. 314. *Quære.*

6. In Caſe of Treaſon the King ſhall have the forfeiture, and in Caſe of Felonie he ſhall have year day and waſte: and then the Lord ſhall have it, and till then the Lord is not to have it.

7. But before the Lord in this Caſe is to take advantage of it, the Homage where there is a Court ſhall do well to Preſent it; and then Proclamation is to be made, That if any ſhall come in and

make a juſt Claim to it he ſhall be received, which no man doing, the Title is clear in the Lord. *Co. of Copyhold f.* 84.

Our ſubject matter in hand being about the Profits of a Mannor, the Services, Duties and Performances of the Tenants; and the payment of Rent being a ſpeciall part thereof, we ſhall adde this Title by way of Appendix alone & by it ſelfe, and ſo end this Treatiſe.

Chap. 42.

Of a Rent.

What it is, and the kindes thereof.

A Rent is a ſumme of money or other conſideration iſſuing yearly out of Lands or manuall Tenements; *Reditus à redeundo quia retroit, vel à reddere. i. retro dare.* This differeth eſſentially from an Annuity, for a Rent doth alwayes iſſue out of Lands or Tenements, and the Land alſo is the debtor. Otherwiſe it is of an Annuity which is chargeable upon the perſon of a man onely, and hee alone is the debtor for this. *Co. upon Lit.* 141.142. *Plow.* 132.138.139. And of Rents there are ſaid to be three kinds.

1. Rent

1 Rent ſervice, which is, where a man doth hold his Land of his Lord by Fealty and certain Rent, or to render and yeeld hens, capons, roſes, ſpurs, bows, arrows, horſes, wheat, or the like; or to perform any Office, or yeeld any attendance or the like: And to this Rent diſtreſſe is incident of Common right. Rent ſervice what it is.

2 Rent Charge, which is where an eſtate is made or Lands or Tenements to another in Fee-ſimple, Fee-taile, for life or yeares, rendring a ſumme of money, or other thing to be paid yearly to him that made it and his Heirs; and there is a Clauſe in the Deed, that if the Rent be behind, it ſhall be lawfull for the Feoffor, Leſſor or Donor to diſtrain for it upon the Land. Or where one doth grant a Rent out of his Lands or Tenements to another in Fee for life or years, with ſuch a power to diſtrain for the Rent, if it be behinde; and to this no diſtreſſe is incident of common right, but by the agreement of the parties, the Land is charged with the diſtreſſe; and hence it is called a Rent charge. Diſtreſſe. Rent charge what it is.

3 Rent ſeck is where a Rent is reſerved or granted (as in the Caſe before) without any Clauſe of diſtreſſe, Rent ſeck what it is.

or power to distrain, and this is called *redditus siccus*, a dry Rent; because he that is to have it, till he hath gotten seisin of it, he hath no remedy to recover it, if it be denied to him; and then he hath no other remedy but an Assise for the recovery of it. *Termes of the Law. Rent. Co. upon Litt.* 142. *Litt. chap.* 12. *Finches ley.* 155. *Do. & St. chap.* 30.

And regularly, a man cannot have or challenge or make a Title to any kinde of Rent, unlesse it be a Rent Service, or a Rent Charge in the case of Prescription, or for equality of Partition, unlesse he have a Deed to shew for it. *Co.* 6. 63 *Litt.* 40. *Co. upon Litt.* 142. 146.

2. *What kind of Rent it is.*

Rent service.

IF one be seised of Land in Fee, and make a gift of it in Tayle, or make a gift in Tayle to one, the remainder in Tayle to another, or a Lease for life or yeares, keeping the reversion in him, without any Clause in the Deed inableing him to distrain for it, this is a Rent service. And if he in reversion grant away his Reversion to another, and the Tenant attorn; this is a Rent service still.

ſtill. But if the Reverſion be gone, it doth continue no longer a Rent ſervice, for there can be no Rent ſervice, but where there is a reverſion. *Litt. Sect.* 214. 215 228. 229. *Plow.* 132. 142. *Co. upon Litt.* 162. Rent ſeck.

And therefore if one by Deed indented make a Feoffment in Fee to one, or a gift in Tayle, or a Leaſe for life or yeares, to one with the remainder over to another in Fee, and reſerve a Rent upon any ſuch eſtate without any clauſe of diſtreſſe for not payment; this is a Rent ſeck, not a Rent ſervice. So if one ſeiſed in Fee of Land by Deed Poll or Indenture, grant a Rent iſſuing out of his Land without any clauſe or diſtreſſe for not payment; this is a Rent ſeck. *Litt. Sect.* 214. 215. 217. *Co.* 6. 58. upon *Litt.* 150. 151.

If there be Lord and Tenant, and the Lord grant the Rent except the Fealty (which is incident to every Rent ſervice) this is a Rent ſeck *Perk. Sect.* 113. So if one hold his Land by Homage, Fealty and other Services, yielding a Rent, and the Lord grant away the Rent reſerving the Services, or grant the Services ſaving the Rent; in theſe caſes the Rent

Rent is a Rent ſeck. *Litt. Sect.* 226. 227. *Co. upon Litt.* 151.

If one Leaſe Land to another for life rendring Rent; and after he in reverſion grant away this Rent to another; this during the life is a Rent ſeck. *Litt. Sect.* 228.

It is ſaid if a man grant a Rent out of three Acres, and grant over, that if the rent be behind, that he ſhall diſtrain for the rent in one Acre; this is a rent ſeck in all, and yet he may diſtrain for this in the third Acre. So if a rent be granted to one and his Heires out of an Acre of Land, and that it ſhall be lawfull for him to diſtrain for Term of his life; this is a rent charge for his life; but after a rent ſeck. But if it be that hee ſhall diſtrain for a certain number of years; this is a rent ſeck alwayes. *Co. upon Litt.* 147.

Rent Charge.

If one deviſe a rent by Will in Fee-ſimple, Fee-taile for life, or for yeares without any clauſe of diſtreſſe; this is a rent ſeck: but if it bee with a clauſe of diſtreſſe, it is a rent charge. *Co.* 6. 56. *Dyer* 34 2.

If one make a Feoffment in Fee, gift in taile, leaſe for life or years of land to one

one, or a gift in taile, leaſe for life or yeares, with the remainder over to another in fee, and upon any ſuch eſtate reſerve a rent, and in the Deed there is a power to diſtrain in the Feoffor, Donor or Leſſor, if the rent be behind; this is a rent charge. *Co. upon Litt.* 143. *Plow.* 132. *Litt. Sect.* 217. So if one by Indenture or Deed Poll, grant a yearly rent to be iſſuing out of his Lands to another in Fee-ſimple, Fee-taile, for life or yeares, with ſuch a power in the Deed. 13 *Ed.* 4. 6. 5 *H* 6. 6. *Litt. Sect.* 218. So if the Tenant of the Land chargeable with a Rent ſeck, grant a power to diſtrain upon the Land for the rent to him that hath it; this is now become a Rent charge. *Dyer* 348.

So if one Coparcener upon a partition to make an equality, agree that the other ſhall have a rent out of his part of the Land; this is a rent charge for which the other may diſtrain, though there be no Deed for the Rent, nor Clauſe of diſtreſſe in a Deed. 15 *H.* 5. 5.

3. *What*

3. *What ſhall be ſaid a good rent by grant or reſervation, or not; and how it ſhall be taken.*

In reſpect of the thing out of which it is grantable.

IF a Feoffment, gift in Tayle or a Leaſe be made of a Mannor, Lands, Meadowes, Paſtures, Mill, or any ſuch like corporeal hereditament rendring a rent, or a rent be granted out of any ſuch thing, it is good: So if it be out of the veſture or herbage of Land, or a rectory or a meſualty. But a grant or reſervation of a rent out of a thing not maynorable: as a Faire, Market, Rent, Tythes, Advowſon, Hundred, Fiſhing, common Office, the next avoydance of a Church, right of Land, Corrody, Multure of a Mill Franchiſes and the like incorporeal Hereditament, is not a good rent; for a rent muſt be alwayes reſerved out of ſuch a thing to which the party may reſort for a diſtreſſe. *Co.* 7. 27.38. *Co.* 4.10.49. *Plow.* 157.138. *Co.* 1. *part.* 47. And yet if one be ſeiſed of a reverſion or remainder of Land after a Leaſe for life, or yeares, or gift in tayle, and grant or reſerve a rent upon this Land; this is a good rent, and when it comes in poſſeſſion either by determination

nation of the time in courſe, ſurrender, or otherwiſe, it will take hold of the Land. *Co. upon Litt.* 144. 47 *Plow.* 198.

If one that hath but a Leaſe for years of Land, make a Leaſe of it rendring rent or grant a rent out of it; this is good during the Tearme: and if he grant for longer time, it is good during the Tearme. *Co.* 2. 36. 14 *H.* 7. 2. But if one be ſeiſed in Fee of white Acre, and poſſeſſed of a Tearme in black Acre, and grant a rent out of both theſe for life, this rent ſhall iſſue out of white Acre onely: Yet both the perſon, and both the Acres ſhall be charged as long as the Tearme laſteth; and after the perſon and white Acre onely. *Co. upon Litt.* 146. *Co.* 7. 23.

If one be diſſeiſed of Land, and after grant a rent out of it; this is void. And yet if the grant be by Fine or Indenture, it may be good by way of Eſtoppell. *Co.* 2. 53.

If one grant a rent reſerving a rent, or grant a rent iſſuing out of another rent; theſe grants and reſervations as to create a rent are void. *Co.* 10. 60. 1. 59. And yet in the caſes before of a rent granted or reſerved out of things not may-

maynorable, albeit the grant or reſervation cannot be good as to the creation of a rent to charge the thing out of which it doth iſſue; yet it will be good to create an Annuity to charge the perſon of the grantor. *Kelw.* 161. *Co* 6. 58. 10. 93.

Annuity.

In reſpect of the manner of granting or reſervation

A rent may be granted or reſerved by Fine or a Deed of bargaine and ſale, as well as upon a Deed of Feoffment or Leaſe. *Co.* 2. 72. *Stat.* 27 *H.* 8. *chap.* 10. *Co. upon Litt.* 144. 193. A rent may bee reſerved on a releaſe that doth enure to enlarge or make an eſtate; but not upon a releaſe that workes by way of extinguiſhment or *mitter de droit*. A rent may be granted by will alſo, and therein alſo may be given a power to diſtrain as well as by Deed. *Co.* 1. 84. *Dyer* 348. But it cannot be had or claimed, nor is it grantable but by Deed except in ſome ſpeciall caſes. *D. & St.* 86. *Bro. Reſervation.* As upon a partition of Land, and by a ſpeciall Preſcription that hee and his Anceſtors whoſe heire hee is, have been ſeiſed of it, and uſed to diſtrain for it. *Co. upon Litt.* 146. 144. *Co.* 6. 58. 63.

If one having an eſtate in white Acre grant xx s. out of [or from] white acre; or xx s. of Annual rent of *I. S.* yearely taken

taken from white Acre, or to be taken at white Acre, or to be taken in or at white Acre; or out of his coffers with a clauſe, that if not paid hee ſhall diſtrain in white Acre for it. Or thus, I oblige my ſelfe to *I. S.* and his heires in an annual rent of x. l. which I take of my mannor of *S.* and I oblige my mannor foreſaid to be diſtrained. Or thus, if one haue a mannor and ſay, I oblige my manner of *C.* & all the goods in the ſame mannor being mine to *I. S.* &c. in annual rent of xxs. to be diſtrained by the baily of our Lord the King for the rent foreſaid. But if one by Deed in a way of Covenant to pay x li. a year, & not by way of reſervatiõ or grant to do a thing as often as default ſhall be that he ſhall forfeit x li. theſe & ſuch like are not rents but ſums in groſſe, nor recoverable as rents, but by action of debt or covenant. *Dyer* 361. *Pl.* 133. *Dyer* 24. And if one grant 40 li. a year out of his coffers, or out of his clear gains, or out of the Land of a ſtranger, or out of a thing not chargeable with rent; in theſe & the like caſes it is not a Rent but an Annuity chargeable on the perſon onely. *Co.* 6. 58. 10. 93. All grants of rents after either

Summe in groſſe.

Annuity.

of

of theſe, or in any ſuch like form may be good to charge both the perſon and Land. 46 *Ed.* 3. 48. *Co.* 7. 23. *Kelw.* 161. 4 *Ed.* 2. 15. 46. 22. *Aſſ.* 66, 21 *H.* 7. 4. *Dyer.* 45. 26 *H.* 8. 5. *Co. upon Litt.* 145.

If one grant a rent out of all his lands and that if it be behind, he ſhall diſtrain in white Acre for it; this is good to charge the perſon and white Acre onely; not any other Land. *Co.* 7. 23. So if he grant it out of one Acre and it be behind, that he ſhall diſtrain in another Acre; Both the Mannors are charged, the one with the rent, the other with the diſtreſs for the rent *Co. Inſt.* 147. 9 *H.* 6. 9. If one grant to another that he ſhall diſtrain for a rent of 40ˢ. a yeare in white Acre, if it be not paid him yearly at Michaelmas; this is good to charge this Land, but not to charge the perſon of the grantor. *Plow.* 139. *Co.* 7. 24. *Litt.* 219, 220. If I have twenty Acres of Land and grant a rent of xxˢ. to be taken of every Acre of land; this is a good grant, and ſeverall out of every Acre xxˢ. xxˡⁱ. in the whole. *Co. upon Litt.* 147.

If a reſervation of rent be in a Deed, and ſay not to whom, yet this is a good rent, and ſhall continue as long as the eſtate,

eſtate, and ſhall go to the heire or him in reverſion. *Dyer* 45. *Kelw.* 88. But if it be rendring a rent to a ſtranger who is no party to the Deed, this is void. 27 *H.*8.19. And yet if he be a party to the Deed, although he have no intereſt in the Land it is good enough. *Bro. Reſervation* 15.12. *Plow.* 155. And if the reſervation of the rent be to the Leſſor, and a ſtranger who is no party to the Deed, it is void as to the ſtranger, and the Leſſor ſhall have the whole. So albeit the Leaſe be made by the Father, and his eldeſt ſon rendring rent to the ſon, or a Leaſe to begin after the fathers death, rendring rent to the ſon. *Trin.* 12 *Jac. Oates Caſe Adjudge.* If the eſtate bee void upon which the render of rent is made, the rent is void alſo. 14 *Car. B.R.* If Lands be given in franck mariage reſerving a rent, the reſervation is void till the fourth degree be paſt; and then it is good, 26 *Aſſ.* 66.

If one ſeiſed in Fee of land grant a rent out of it to *I. S.* for life, and after a clauſe that hee and his heirs may diſtrain in the land for the rent; this is a good new grant of a new rent in Fee-ſimple over and above the grant for

life. *Coke upon Littleton*, 147. 148.

If one by Deed indented demiſe to *A.* for life with divers remainders over, Rendring therefore to the Leſſor and his heirs a Rent; this reſervation ſhall extend to all the eſtates, and if he in remainder accept the eſtate, he muſt pay the rent. *Co.* 10. 107. 5. 111. And if one Leaſe for a yeare with theſe words; and if the parties ſhall agree for a new Leaſe for longer time then for three yeares: Rendring during the Term foreſaid: This reſervation ſhall extend as well to the firſt year as to the three laſt yeares. *Co* 10. 106.

If one grant a rent charge out of his Land, provided that it ſhall not charge his perſon in an Annuitie, this is a good rent as to charge the Land, but not the perſon. And yet if it were without clauſe of diſtreſſe with ſuch a *proviſo*, the *proviſo* were void unleſſe the grantor did give the grantee ſeiſin of the rent at the time of the grant. *Co.* 6. 58. upon *Litt.* 146.

4. *The remedy or means to recover a rent, and the arrearages thereof.*

IF one have a Freehold rent and have gotten actuall ſeiſin thereof, and be after

after diſſeiſed of it, he may have an aſſiſe to recover it, and dammages for it, which in an Aſſiſe he ſhall recover, but in a Reſcous he ſhall recover dammages onely, and the thing diſtrained ſhall be taken as a diſtreſſe. But if one that never had ſeiſin of a rent diſtrain, and a Reſcous be made, he cannot have an Aſſiſe, but he muſt have a Reſcous. *Co.* 1. 97. And here note that the diſſeiſin of a rent is when the party is diſturbed in the means of recovery of his rent, which for a rent charge is ſaid to be five wayes.

1. By Reſcous, which is when the party is diſtrained, and the diſtreſſe is reſcued, or being upon the land to diſtrain cannot be ſuffered.

2. Replevin, which is when an action of Replevin is brought upon the diſtreſſe taken.

3. Denier, which is the denying or not payment of the rent on the Land when it is required.

4. Incloſure, which is when the party doth come to the place whence the rent doth iſſue; or he hath power to diſtrain and it is incloſed by walls or the the like that he cannot come at it; but if it be not newly, but were anciently incloſed,

ſed; then were it no diſſeiſin.

5. Foreſtalling, which is when the party is going to diſtrain for the rent, & the Tenant hearing of it doth foreſtall the way with force and armes, or threaten to kill or wound, ſo that he dare not go to diſtrain. The diſſeiſin of a rent ſervice is ſaid may be by Reſcous, Replevin and Incloſure. The diſſeiſin of a rent ſeck is ſaid to be by denying, incloſing and foreſtalling. *Coke upon Litt.* 160. 161. 153. *Litt.* 236. 237. 239. 240.

In ſome caſes a man may have an Aſſiſe to recover his rent; in ſome caſes he may diſtrain; in ſome caſes he may have an Annuity or an Action of debt; in ſome caſes he may Reenter upon the Land for not payment of the rent; and in ſome caſes he hath his choice to doe the one or the other: but in caſe where a man may diſtrain, he may not diſtrain in any place, but there where the diſtreſſe is given. *Litt.* 48. *Plow.* 239. nor may he diſtrain after the eſtate is ended; nor may he diſtrain and keep the goods againſt a Replevin; albeit the Deed ſay he ſhall keep the diſtreſſe againſt gages and pledges. *Co. upon Litt.* 145. 282.

If

If one at Michaelmas make a Leaſe for yeares rendring rent at Michaelmas or ten dayes after, in this caſe the Leſſor may bring an action of debt for the laſt yeares rent, and ſuppoſe it to be due at Michaelmas. *Barwicks Caſe Trin. 9. Jac.*

If a Leaſe be made rendring rent on condition of reentry for not payment, and the Leſſor reenter, yet he may bring an Action of debt for the rent. And in the caſe where a Reentry is given if the Leſſor make a demand duely; if after he receive the Rent, yet it ſeems he may enter upon the Land. *Kelw.* 112. 153.

Rent ſervice.

The Lord may diſtrain for a yearely rent due from a Freeholder, but he may not have an Action of debt for it, or for any corporall ſervice as long as the ſame doth continue; but when the rent is ended, an Action of debt will lie. *Co. of Copy-hold* 50. But ſome ſay that for a rent ſervice due upon a gift in Taile or Leaſe for life, he may onely bring an Aſſiſe or diſtrain; and that an Action of debt lieth onely for a rent ſervice reſerved upon a Leaſe for years. *Litt. Sect.* 213. 331. *Perk. Sect.* 693.

If one that hath a Leaſe of Land for

yeares, grant it over for a part of the time rendring rent; in this caſe the Leſſor may diſtrain or have an Action of debt for this rent; and therefore it is taken for a rent ſervice. *Plow.* 526. 9 *H.* 5. 8. *Perk. Sect.* 693.

Rent charge.

If a rent charge be unpaid, the party that ought to have it may in ſome caſes have an Aſſiſe for it, and in all caſes either diſtrain for it, or hee may bring an Annuity againſt the perſon of the Grantor at his election, except one of the remedies be prevented by the Originall agreement; as where a rent is granted, provided it ſhall not charge the perſon of the grantor, &c. But where the party hath a double remedy he may not make uſe of both; for if in caſe where the perſon is chargeable and the Writ of Annuity doth well lie, if hee bring this Writ or an Aſſiſe where it lieth, and make his plaint in the Aſſiſe, or declare upon the Writ of Annuity; by this the Land is diſcharged for ever. And if hee once diſtrain and a vow for it in a Court of Record, by this the perſon is diſcharged for ever. But the bare purchaſe of the writ of Aſſiſe or Annuity onely doth not determine the election.

on. *Dyer* 344. *Litt. Sect.* 219. *Co.* 7. 24. *Plow.* 13. *Dyer* 362. *Co. upon Litt.* 145.

If one have a rent charge for yeares, and the Tearm expired, in this caſe he cannot diſtrain for the rent; *per* two Juſtices, *Paſ.* 10 *Car. B. R.* but he muſt have an Action of debt for it.

If a rent charge be granted with *proviſo*, that it ſhall not charge the perſon of the Grantor, and the rent is behind, and the eſtate is determined, ſo that now he may not diſtrain for it; in this caſe he may bring an Action of debt, and charge the perſon, *Co.* 7. 37. *Dyer* 227.

Rent ſeck.

If one have a rent ſeck and it be not paid, he may diſtrain for it in three caſes. Firſt, where a woman hath it in part of her dower. Secondly, when the King is to have it. Thirdly, when a Parcener is to have it to make an equality of partition. But in all other Caſes there is no remedy for recovery of a rent ſeck but by an Aſſiſe; nor can this be had neither, till he have got ſeiſin of the rent in a legall way. *Kelw.* 104. *Co.* 7. 28. 6. 56. 58. *Litt.* 235.

5. Who ſhall have the rent and remedy, & upon whom ſhall it be charged or not.

THE rent in moſt caſes doth follow the reverſion of the land if there be any, as the ſhadow doth the body. *Co.* 5. 55. *Dyer* 5. Recoverers upon common recoveries ſhall have the ſame remedy for their rents by diſtreſſe or action of debt againſt the Leſſee for yeares before attornment as the recoverees had. *Stat.* 7 *H.*8. *chap.*4. *Co. upon Litt. f.* 104.

Executors ſhall have the like remedy for rent charge, and rent ſervices due to their Teſtator as their Teſtator had; and for the arrerages due in their Teſtators time, they may diſtrain the Tenant of the land whether he be heire or Feoffee to him that ſhould have paid it, or heire or Feoffee of the heire, or Feoffee and ſo infinitely, iſſues in taile or *Ceſtuy à que uſe*, or any other that come into the land from or under him that ſhould have paid it *Stat.* 32 *H.*8. *chap.* 37. If I make a Feoffment in Fee, gift in Taile, Leaſe for life or yeares of land rendring rent to me, or a rent be granted out of land to me in Fee, in Taile or for life, and the rent be in arrear, and I make my executor

ecutor and die, and the land or rent descend to my heir; my executor and not my heire shall have it, and the action of debt for it. *Co.* 4. 48. 50. *Dyer* 375. *Co. upon Litt.* 162. If a rent be granted to me, my heires and executors during the life, of *I. S.* and for one half yeare after; in this case my executor shall have this half years rent. *Curia M.* 7 *Jac. Co. B. Watts Case.* But if a Lease be made for yeares rendring rent to the Lessor and his heirs at Michaelmas, or within ten daies after, and the Lessor during the Tearme doth hap to die after Michaelmas before the ten daies be expired, in this case the heir not the executor shall have the yeares rent. *Hil.* 7 *Iac. Curia B. R.* And if within the ten dayes hee had granted away the reversion and the Tenant had attorned, the Grantee of the reversion shall have the rent. *Co.* 11. 12. If one seised in Fee of land make a Lease for years of it rendring rent, and then devise the rent to a stranger by will, & the Devisee dy; in this case it seems the executors must have it, not the heire. *Dyer* 5. 6. If the reservation of the rent be to no body, the arrears shall go to the executor, and the rent forwards as in the cases before. So if the

the reſervation be to him or his heires, *Dyer* 204. If one ſeiſed in Fee of a houſe, and make a Leaſe thereof, and of certain implements therein for yeares, rendring rent to him, his heires and aſſignes, and the Leſſor die, in this caſe the rent ſhall goe to the heire all the time: But if the Leſſee had convenanted to pay ſo much money during the time; this ſumme had gone to the executor. *Dyer* 361.275. And if one grant a rent for life out of his land, and the rent is arrear in divers Feoffees time one after another, and the Grantee die, his executors may have an action of debt againſt every one of the Feoffees for his time. But if a Tenant in taile make a Feoffment and the diſcontinuee charge the land, and after enfeoff the iſſue in taile and die, the iſſue is remitted to his firſt eſtate, and ſhall not be charged with this rent. *Co.* 7.37. So if one have a rent charge or rent ſervice in Fee, or for life and it be arrear, and after he grant away the rent to another, and the Tenant attorn, and then he die; in this caſe the executor ſhall not recover the arreares, but they are loſt. *Co.* 7.37.

If one have a rent charge or rent ſervice *pur auter vie*, and the *cey' que vie* die,

die, yet the party may have his remedy againſt the occupier of the Land by diſtreſſe: As if one deviſe a rent out of land by will, with clauſe of diſtreſſe to *B.* for the life of *C.* and the heire to whom the land charged doth deſcend, doth Leaſe it to *D.* the remainder to *E.* in Fee, and the rent is behind in the life of *D.* and *D.* die, and after *C.* die: now in this caſe the land in the hands of him in the remainder ſhall be charged with theſe arrears, and the party may diſtrain for them. *Stat.* 32 *H.*8. *ch.*37. *Co.*6. 118.

All arrearages of rent incurred and due to the wife before or after mariage, the husband ſhall have if he ſurvive her; as if ſhe be endowed of a rent, and take a husband and die, he ſhall have the rent arrear during the coverture and remedy by the Statute of 32 *H.*8. *Co.*4. 51. *ſuper Litt.* 351. So if he make a Leaſe of his wives land rendring rent, and ſhe die, hee ſhall have the rent due in her life time. 9 *H.*6. 52. And yet if the husband be ſeiſed of a rent in the right of his wife and the rent incur, and the husband die, in this caſe the wife ſhall have the arreares: by 3 *Juſtices.* 22 *Jac. B. R.* 9 *H.*6. 43. 29 *Ed.*3. 40. If any rent charge, or

rent

rent ſervice be due to any ſingle woman, who doth after mary, or to any maried woman during the coverture; in theſe caſes the husband, his executors or adminiſtrators ſhall have the ſame remedy by diſtreſſe or action of debt as the wife had. As if a feme ſole have a rent charge granted to her for life, and the rent bee behinde, and after ſhe take a husband, and the rent be behinde again, and ſhe die, the husband may recover both theſe rents. *Stat.* 32 *H.* 8. *Ch.* 37. *Co.* 4. 50. *F. N. B.* 121. *Co. upon Litt.* 162. If one grant a rent charge to *A.* and *B.* for 21 years if the Grantor live ſo long; and after *A.* and *B.* entermary, and then the rent doth incurre, and *A.* die, and after more rent doth incur; in this caſe the woman and not the executor of her husband ſhall have all the rent before and after the husbands death. *Hill.* 22 *Jac. B. R.* The Court in *Burgers Caſe.* 33 *H.* 6. 20. If a woman and her ſecond husband Leaſe the Land ſhee was endowed of by her firſt husband, rendring rent, and this is behind & ſhe die, the ſecond husband, not the heire of the firſt husband, ſhall have this rent. *Bro. Rent.* 10.

If a man ſeiſed of a Tearme of Land for

for 20 yeares in the right of his wife, Leaſe the ſame Land for 10 yeares to a ſtranger rendring rent, the rent is behind, the husband die, it hath been ſaid the wife and not the executor ſhall have the rent. *Perk. Sect.* 834. But the contrary hath been adjudged *inter Blaxton & Heath* Kings Bench *Co. upon Litt.* 46. 35. Yet the wife ſhall have the reſt of the Tearme. If the husband be poſſeſſed of a Tearm of land in the right of his wife, and hee let part of it rendring rent and die, the wife ſhall not have this rent, but the executor of the husband. *Dyer* 180. 107. 104.

If *A.* a Tearmor die, and make *B.* his executor; and *B.* make a Leaſe of part of the Tearm to *C.* rendring rent and dy inteſtate, and *D.* get an adminiſtration of the goods of the firſt Teſtator; in this caſe *D.* ſhall not have the rent, by *Juſtice Haughton Hill.* 18. *Jac. B. R.* becauſe he comes about it. And if *A.* Tenant in taile diſcontinue to *B.* who doth Leaſe to *C.* for yeares rendring rent, arrearages doth incur, *A.* dies, his iſſue doth recover againſt *B.* in a *Formedon.* Yet the Leſſee ſhall pay the arrearages to *B.* by *Juſtice Haughton* 18 *Jac. B. R.*

If

If one ſeiſed of land as heire of the part of the mother and make a Feoffment in Fee of it, rendring rent to him and his heires; this rent ſhall go to the heires of the part of the fathers, but if it had been a Leaſe for life, or gift in tayle, it had gone to the heires of the part of the mother. If the husband have a Leaſe in the right of his wife rendring rent, and the rent is behind during the Coverture, and ſhe die; in this caſe he ſhall be charged by a ſuit for this rent after her death. *Kelw.* 81. 10 *H.* 6. 11.

6. *Where a rent ſhall be ſaid to be determined and extinct in all or part, or not; but ſhall be apportioned, and where it ſhall be apportioned, or not.*

WHere the eſtate to which the rent is annexed doth determine, there the rent as to the Land is determined. And yet there in ſome caſes the perſon ſhall be charged after with it in an Annuitie. If there be a Leſſee for life or yeares determinable upon life, and this Leſſee make a Leaſe for yeares reſerving rent to be paid at the 4 quarter Feaſts, and the life die, the rent is gone; and if he die before the quarter day, the quarters rent is gone, *Co.* 10. 127. So if one make

make a Leaſe at will rendring rent, and after the Leſſor doth determine the will, the rent is gone. *Tearmes Ley.* So if a rent be granted in reſpect of an Office, and the Office be determined, the rent is gone. *Plow.* 381. If all the Land, out of which the rent iſſueth, be recovered from him that hath a Title before the day of payment; as if there were a Judgement againſt the Leſſor before the Leaſe and after the Leaſe, execution is ſued out by an *Elegit* or otherwiſe: ſo that the Leſſee is rightfully evicted out of all the Land, or a diſſeiſor charge the Land, and the diſſeiſee doth recover it in an Aſſiſe or the like; in theſe caſes all the rent is gone. But if the eviction be but of a part of the Land, there ſhall be an opportionment of the rent. And if one that hath land rightfully charge the land, and another that hath no right doth recover it in a fained action, this will not determine the rent. *Co.* 10. 127. *Plow.* 71. 134. 37 *Eliz. B. R. Dayes Caſe.* And if a Diſſeiſee releaſe his right to the Deſſeiſor after his grant of the rent charge, the rent will continue. But if the diſſeiſee enter and make a Feoffment by this the rent is gone. *Co. upon Lit.* 177.

If

If a rent be granted to one, and his heires in Fee, or to a Corporation in Fee, and the man die without heire; or the Corporation dissolved, it seems the rent is gone. 27 *H.* 8. 10. If *A.* give lands to *B.* and the heires of his body rendring rent, and *B.* doth bargain and sell the land to *C.* and his heires; and therein Covenant that *C.* shall enjoy it after the Annuntiation of *Mary* next free from all incumbrances, and before that day a common recovery is had against *C.* in which *B.* is vouched to the use of *C.* and his heires; in this case the rent is not gone. *Hill.* 20 *Jac. B. R. Greenway* and *Tuckfields Case. Ewrs Case* 42 *Eliz. Co. B.* For this rent is reserved by the donor before, or at least at the time of the entaile made; and is as if Tenant in Taile grant a rent charge out of the Land, and then suffer a Recovery, this doth affirm the rent: or as when the Lord Paramount doth purchase the Tenancy Paravaile the Mesne shall have the rent. But if after the entaile made, the donor doth grant a rent out of the Reversion, and after the Tenant in taile suffer a Recovery; in this Case the rent is gone. *Co.* 1. *in Capels Case.*

If

If Leſſee for life make a Leaſe for yeares rendring rent, and after the Leſſee for life ſurrender his Leaſe, the rent is gone by *Ch. Juſtice Bridgman.* But if one make a Leaſe for yeares rendring rent, and after grant the rent to *I.S.* and the Tenant attorn, and after the Leſſee for yeares doth ſurrender, yet the rent doth continue, and it ſeems he may have an Action of debt for it. So if Leſſee for yeares of land grant a rent charge out of the land, and then ſurrender his eſtate; the rent is not gone. *Co.* 8. 144. 20 *Ed.* 4. 13. *Plow.* 198. If there be a Leſſee for life rendering rent, and the Leſſor confirm the land to the Leſſee and his heirs without any reſervation of rent; in this Caſe the rent is gone. *Bro. Extinguiſhment* 28.

If two Joynténants bee, and one of them grant a rent out of the land and die; in this Caſe the rent is gone, and the Surviver ſhall hold it diſcharged. But if the Surviver had accepted a Releaſe of the right of his companion, contrarie. *Co.* 6. 16.

If one have a rent charge iſſuing out of land to him and his heirs, and hee purchaſe the Fee-ſimple of all or any

part of the land, out of which the rent doth iſſue; by this the rent is gone for ever. *Co.* 4. 38. *D. & St.* 35. *Dyer* 45. So if the whole land deſcend to him in Fee-ſimple, the rent in future is gone. Otherwiſe it is where the father doth purchaſe but part of the land, out of which the rent doth iſſue, and this land doth deſcend upon the ſonne, here the rent is not extinct but apportioned, *Co.* 4. 49. and he hath not ſo much as an Annuity left for his money. *Co. upon Litt.* 148. As he hath in caſe where the diſcharge is by Act of God, or by Act of Law; for there though the rent be gone, yet a writ of Annuity will lie for the rent to charge the perſon; as if *Tenant pur auter vie* grant a rent charge to one for 21 yeares, and *Ceſtui que vie die*, the rent is gone as to the land, but the perſon chargeable during the Tearme. So if the land out of which the rent iſſueth is recovered by one that hath an elder Title. *Co. upon Litt.* 148. But if a man that hath a rent ſervice purchaſe part of the land, out of which it goeth; in this Caſe the rent if it be ſeverable ſhall be apportioned, but if it be an individable rent, as a horſe or the like, it is all gone. *Litt. Sect.*

Sect. 222. And if the Grantee of a rent charge purchaſe part of the land, and the Grantor by his Deed reciting this purchaſe, doth grant that he ſhall diſtrain in the reſidue, by this the rent may be created again. *Co. upon Litt.* 148. And yet if he that hath a rent charge releaſe part of it to the Tenant of the land and reſerve the reſt; this is good for the reſt. Or he may grant away part of it, and with the attornment of the Tenant this will be good, and the rent ſhall be divided. *Co. upon Litt.* 148.

If a man make a Leaſe for life or years, reſerving rent; and the Leſſee ſurrender part of the Land to the Leſſor; in this Caſe, the rent is not gone, but ſhall be apportioned. So if the Leſſor recovereth part of the land in an Action of waſte, or entereth into part for a forfeiture, the rent ſhall be divided. So if the Leſſor grant part of the Reverſion to a ſtranger, the rent ſhall be apportioned. So if tenant by Knights ſervice deviſe by his will the Reverſion of two parts of his land; in this caſe the rent ſhall be divided. *Co. upon Litt.* 148.

7. Where a demand or requeſt, or a tender of a Rent is neceſſary or not.

To have an action or diſtres for any Rent.

AN Action may be brought, or a diſtreſſe taken for a rent charge or rent ſervice, without and before any demand made of it. But an Aſſiſe cannot be brought for a rent ſeck and the arrearages thereof, untill the rent be demanded. And if by the Deed or Will, by which the rent is created to be paid upon the Land, it be ſet down that the rent charge or rent ſervice before a diſtreſſe be taken muſt be demanded; in this caſe there need not to be a Demand, but if it be payable at another place out of the Land, *Contra. Dyer* 348. *Co.* 7. 28. *Kelw.* 153. *Co. upon Litt.* 144. 202. *Co.* 6. 56. *Seldens Caſe* 17 *Car. C. B.* If a rent be granted with condition that if it be Arreare, the Grantee ſhall diſtrain; in this Caſe the Grantee need not demand it. *Plow.* 70.

To have a Reentry, or *Nomine pene.*

In moſt places where a common perſon would enter into Land upon a condition for not payment of rent, or will have a penalty or *Nomine pene* of a greater ſumme forfeit for not payment of the

the rent being a leſſer ſumme, there muſt be a demand duely made of the rent ere he can enter, or have the *Nomine pene. Co. upon Litt.* 153.301.202. *Co.* 4.72. And this holdeth true though it be not expreſſed in the Deed that it ſhall be demanded: And albeit no man be upon the Land to tender it, and albeit the rent be payable out of the Land and County; and yet if the agreement be expreſſed, that if the rent be behinde, he that is to have the rent ſhall enter, or the eſtate ſhall ceaſe without demand: here perhaps a demand may not be needfull. *Dyer* 329. 13.79.51. *Co.* 6.56. *Plow.* 172.70. *Co.* 10.129.2 *H.* 7.14. Yet I have ſeen the report of a Caſe thus: If a Leaſe be made rendring rent, and that if it be behind, the Leſſee ſhall forfeit three ſhillings 4 pence in name of penalty, that in this Caſe there needs no demand as in the Caſe of Reentry. *Trin.* 36 *Eliz. Co. B. Thins Caſe.*

If I diviſe Land by Will to *I. S.* on condition he pay 20 li. a yeare out of it to *K. L.* at two Feaſts; in this Caſe there needs no demand. *Dyer* 348. But if one deviſe a rent by Will to *I. S.* and willeth that if it be not paid, the executors or

I.S. ſhall have the Land; in theſe Caſes there muſt be a demand. *Molineux caſe Paſc. 5 Jac. B.R.*

If a rent be granted with condition to Reenter, or *Nomine pene* for not payment, he that is to pay the rent, muſt take care to tender it to ſave the forfeiture. 2 *H.* 7. 8.

8. *What demand or tender muſt be made; and how; and what ſhall be ſaid, a good demand or tender of Rent or not.*

IN all Caſes where a requeſt or demand of Rent is needfull, it muſt be duly made in all circumſtances, or it will not be ſufficient to give a man any advantage.

The demand of a Rent ſeck to inable an Action muſt be made thus: After the rent is due and ſeiſin had of it, the party to have it, or ſome body for him muſt be upon the principall place in the land, the laſt part of the day of payment: or if no tender be made of it on that day, then at any time after the day, and there demand the rent; and if the Tenant or ſome other for him be not there ready to pay it, this is a deniall in Law, upon which

which he may have an aſſiſe, and therein ſhall recover the rent and arrearages thereof, and coſts and damages. But if there were a tender by the Tenant, the laſt part of the day, and no body to receive it; in this Caſe he hath no remedy for the preſent, unleſſe he can meet with the Tenant of the Land in ſome part of the Land: And therefore in this Caſe the beſt way is to be on the Land the next day of payment, the laſt part of the day, and then demand the rent and arrearages thereof; and if no body be there ready to pay it, this is a deniall on which he may have an Aſſiſe. *Litt.* 235. *Cr.* 7. 28. *Co. upon Litt.* 153. 154. A demand to enable a diſtreſſe may bee made at any time after the day, and is good enough. *M.* 40. 41 *Eliz. Stanleys Caſe. Co. upon Litt.* 144. 153.

The demand of a Rent to gain a Reentry into Land, or *Nomine pene* muſt be made thus: Firſt, by and of the right perſons, and for this theſe things are to be known:

1 If a Leaſe be made for yeares rendring rent on condition, that if it be arrear fourty days after the day, that the Leſſor and his heires ſhall reenter, and

the Leſſor demand it and after die; this is a good demand, and his heir ſhall take advantage by it, and may enter. But if the Leſſor die after the day, and then the heir demand it, *Contra. D. & St.* 35. 13 *H.*4.17.

2. If two make a Leaſe, rendring tent on condition, that if it be behind and demanded, they ſhall reenter, and one of them die, the ſurviver may demand it. Or if the Leaſe be made to two on ſuch a condition, and one of them die, the rent may be demanded of the ſurviver of them; *Bro.*207.41 *Ed.*3.16. and accordingly a Tender may be made of rent. And therefore a Tender to one Joyntenant or Copartner, or by one Joyntenant is held to be good. *Bro. Tender.*10.19.

3. The party that is to demand, may doe it by his Attorney or ſervant, as well as by himſelf.

Secondly, for time, it muſt be made the laſt day given for the paiment thereof, and the laſt part of the day ſo long before the ſunne ſet, and it be dark, that the money to be received may be conveniently numbred by day light, and he muſt continue his demand till it be

night

night, and the Leſſor is not bound to demand at any other time. *Co. upon Lit.* 282. *Noy* 98. *Co.* 4. 72. *Plow.* 72. *Dyer* 329. 130. *Co.* 6. 56. When the Leſſee hath two times given him for payment of his rent, as when the Leaſe is rendering rent at Michaelmas, or within tenne dayes after, or in like manner, in this Caſe the demand muſt be made the laſt part of Michaelmas day, and the laſt part of the ten dayes. For if the Leſſee tender it the firſt day, and the Leſſor be not there, and he tender it not the laſt day, and the Leſſor demand it at this day onely; this is not ſufficient, for the Leſſee hath an election to pay it on which of the dayes he pleaſe. But if the laſt day be put in the condition, onely provided, that it be behind ten dayes after, the Leſſor ſhall reenter: in this Caſe it need not be demanded at Michaelmas, but may be demanded the laſt part of the ten dayes onely. *Perk. Sect.* 836. *Bro. Tender* 41. 2 *Henr.* 7. 4. *Co.* 7. 28. 10. 29. *Coke* upon *Littleton* 207. And then and not at any other time the party that is to pay the rent is bound to tender it, when he that is to receive it is bound to demand it.

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Bro. Tender 23. *Co. upon Litt.* 211. But here we muſt obſerve that there are foure times of payment of rent. Firſt, voluntary, but not ſatisfactory, and yet good to ſome purpoſe, as if Leſſee, Donee, &c. pay the rent before the day; this is good to give ſeiſin to enable him that hath it to bring an Aſſiſe. The ſecond time is voluntary, and ſatisfactory in ſome Caſes, as if it be paid the morning of the laſt day, and the Leſſor die, before the end of the day; this is good againſt the heires and executors. The third is the legall and abſolute ſatisfactory time, which is a convenient time before the laſt inſtant of the laſt day, and then it muſt be tendred. The fourth is ſatisfactory, but not voluntary, but coercive, and by ſuit. *Coke.* 10. 127.

2 For place, the demand muſt bee made upon ſome part of the Land, out of which the Rent doth iſſue, (if no other place bee expreſſed) and upon that part which is moſt notorious; as at the Porch and fore doore of the Capitall Meſſuage (if any bee) and not at the back doore, or at another houſe: And if no houſe bee, then at ſome gate or ſtile upon ſome high way going through

through the Land; or if one place bee as notorious as another, then at either of them, and there, and not elsewhere the Rent must be tendered. And if there be two places of payment, as yeelding the Rent at such a stile, or in the Church of Dale or Sale, or in the house, or the like: there demand must be made at both, for the Lessee may tender at either at his choice, and where he may tender, the other must require it. So if it be paying at or in a place, the demand must be at or in the place. And if by expresse agreement it be to be paid at a place out of the Land, the demand must be at the most eminent place there where it is to be paid, and then it need not be demanded on the Land. *Co. upon Littleton* 201. 158. 153. 202. 10. 129. 4. 72. 6. 46. *Dyer* 329. 72. 130. *Noy* 98. And the Lessor is not bound to demand it in any other place, nor is such a demand good. *Bro. Tender.* 11. And though the doore of the house be open, and the party that is to demand see him, that is to pay in the house, he need not goe in to demand it, but it is sufficient to doe it at the doore. *Coke super Lit.* 153. And there and not at any other place the party that is to pay

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pay the Rent is bound to tender it, where he to whom it is to be paid is to demand it. *Plow.* 172. *Coke upon Littleton.* 201.

For time. 105. But by agreements of the parties, it may be tendred, and received before the day in any place. *Perk. Sect.* 836, 827, 838. And ſo perhaps at the day, if the agreement be made of as high a nature, as the firſt agreement was.

For the manner. 3 For the mannor of the demand, he muſt then and there by himſelf or ſome other for him, make an Actual or Verball demand of the Rent; and therein it is good to ſay how much it is, and to ſet forth his readineſſe to receive it after this manner.

note Here I demand of *I.S.* ten pound rent due to me at the Feaſt of, &c. for a Meſſuage, &c. which he holdeth of me by Leaſe, &c. And there let him remain untill it be ſo dark, that he cannot ſee to tell the money. But a demand of more then the Rent, is a good demand of the Rent, *Dyer* 329. 130. 19. 51. *Plow.* 70. *Noy* 98.

And accordingly, he that maketh tender of Rent, muſt make a reall tender; and it is not ſufficient to doe it in ſhew onely, for he muſt prove he had, and ten-

tendered ſo much money as the Rent is.

And if it be to be paid on the Land, it ſeemeth the Leſſor muſt doe the firſt Act; that is to ſay, demand it before the other is bound to pay it; and the other is not bound to tender it, till he demand it. But if it be to be paid at a place out of the Land, then the Leſſee is bound to doe the firſt Act; that is to ſay, tender it at his perill. But it is good in theſe Caſes to doe too much, and to have ſubſtantiall witneſſes to prove what men doe; Abundant warineſs hurts not.

Abundans cautela non nocet.

And if a demand of Rent be not made for time, place and manner, as is aforeſaid, it is not good. And therefore, if one make a Leaſe of a Houſe and divers Lands, and Woods to another for yeares, rendring one hundred pound Rent at Michaelmas: provided, that if the Rent be behind tenne dayes after Michaelmas, the Leſſor ſhall Reenter, [or ſhall forfeit ten pound, in name of penalty;] In this Caſe the Leſſor, if he will take advantage of the condition, muſt come the laſt part of the laſt of the ten dayes, time enough before Sunne ſet, to tell one hundred pound,

to

to the Houſe, and there demand the Rent, and continue there till Sunne ſet, ready to receive the money. *Bro. Diſſeiſin* 69.

Modus & conventio vincunt legem.
Et, volunti non fit injuria.

And yet by agreement of the parties, it may be otherwiſe; for manner and agreement overcome the law. And he who is willing cannot be wronged. *Coke* 7. 28. 25. 40. *Dyer*, 78. 51. *Brooke* 68. And in all theſe Caſes, where a Tender is requiſite, and legally made, it giveth as much advantage to him that doth tender the Rent, albeit the partie refuſe it, as if he did accept it. *Co. upon Litt.* 207. 206. 209.

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